

COMMITTEE CONFERENCE  
PRESIDING MEMBER'S PROPOSED DECISION  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

IN THE MATTER OF: )  
 )  
APPLICATION FOR CERTIFICATION )  
OF THE METCALF ENERGY CENTER )  
[CALPINE CORPORATION] AND )  
BECHTEL ENTERPRISES, INC. )  
\_\_\_\_\_ )

COUNTY OF SANTA CLARA  
GENERAL SERVICES AGENCY AUDITORIUM  
1555 BERGER DRIVE, BUILDING 2  
SAN JOSE, CALIFORNIA

MONDAY, JULY 30, 2001

6:00 P.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS PRESENT

Robert A. Laurie Commissioner, Presiding Member

Mike Smith, Commissioner Keese Advisor

HEARING OFFICER

Stan Valkoksy

STAFF PRESENT

Kerry A. Willis, Staff Counsel

Paul Richins, Jr., Project Manager

APPLICANT

Jeffrey D. Harris  
Ellison, Schneider and Harris, LLP

Kenneth Abreu, Project Manager

Steve DeYoung

Gary Rubenstein

INTERVENORS

Issa Ajlouny

Michael Boyd, CARE

Elizabeth Cord, STCAG

William Garbett

Phil Mitchell

Scott Scholz

Stephen Volker

Jeff Wade

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 PROCEEDINGS

2 COMMISSIONER LAURIE: Good evening. My name is  
3 Robert Laurie. I'm Commissioner of the California Energy  
4 Commission. The purpose of the hearing this evening is to  
5 conduct and provide opportunity for public input on the  
6 Presiding Member's Proposed Decision on the Metcalf Energy  
7 Case. That decision was issued on June 18th, 2001. And  
8 the comment period closed on July 19th.

9 I'd like to introduce to you on my right is the  
10 hearing officer assigned to the case Mr. Stan Valkosky.  
11 It is Mr. Valkosky's responsibility to assist in the  
12 administration of the hearing for today. To Mr.  
13 Valkosky's right is Mr. Mike Smith. Mr. Smith is the  
14 advisor to Chairman Bill Keese, who is my colleague on the  
15 Committee.

16 As Mr. Valkosky will explain, the comments will  
17 be received. The Committee will discuss the comments and  
18 modify the Presiding Member's Proposed Decision as may be  
19 necessary to be consistent with those comments. That  
20 modified decision, whatever it might be, will then go to  
21 the full commission for a consideration.

22 That full Commissioner meeting will be noticed.  
23 The date has not as yet been set. I would expect it to  
24 occur within 30 days.

25 At this time I'll call on the Hearing Officer,

1 Mr. Valkosky to explain the procedures that we'll follow  
2 today and for an introduction of the parties.

3 Mr. Valkosky.

4 HEARING OFFICER VALKOSKY: Thank you,  
5 Commissioner Laurie. At this time. I'd like the parties  
6 to introduce themselves.

7 Mr. Harris.

8 MR. HARRIS: Thank you. My name is Jeff Harris  
9 with the Ellison, Schneider & Harris on behalf of the  
10 applicant.

11 MR. ABREU: Ken Abreu. I'm project manager for  
12 Calpine and Bechtel.

13 MR. DeYOUNG: Steve DeYoung Environmental Manager  
14 for the project.

15 HEARING OFFICER VALKOSKY: Mr. Willis.

16 STAFF COUNSEL WILLIS: Thank you. Kerry Willis,  
17 staff counsel with the Energy Commission. To my right is  
18 Paul Richins who is our project manager, and Eric Knight  
19 who was our land use analyst. We also have several other  
20 staff that will be here and I'll introduce them at the  
21 time appropriate.

22 HEARING OFFICER VALKOSKY: I'd like the turn to  
23 the intervenors. Mr. Ajlouny.

24 MR. AJLOUNY: Yes, Issa Ajlouny, intervenor. And  
25 I would like to mention that Santa Teresa Citizens Action

1 Group will be here in a few minutes with their lawyer.

2 They're just running a little late.

3 MR. GARBETT: William Garbett representing the  
4 public, Intervenor.

5 HEARING OFFICER VALKOSKY: Okay, thank you. By  
6 way of introduction to supplementing Commission Laurie's  
7 remarks. Like everyone, I realize the purpose of today's  
8 conference is not to reargue the substance of the case.  
9 It's essentially to assist the Committee into fully  
10 understanding the comments submitted.

11 At the conclusion of the business we have to  
12 conduct today, the Committee may, as time permits, also  
13 allow general public comment. I'll see what happens as we  
14 get to that point. I'd like to note that comments on the  
15 PMPD have been submitted by applicant, the staff, Santa  
16 Teresa Citizens Action Group, Californians For Renewable  
17 Energy or CARE, Intervenor Ajlouny. And, in addition,  
18 staff submitted on July 23rd a table of LORs consistency  
19 on behalf of the County of Santa Clara, as well as on last  
20 Friday, July 27th a similar table representing input from  
21 the City of San Jose.

22 Is there anyone here from the City of San Jose,  
23 by the way?

24 MS. COOK: I'm Heather Cook, from Council Member  
25 Forest Williams office, but I don't representing the

1 Planning Office.

2 HEARING OFFICER VALKOSKY: You do not  
3 represent -- did you get that was Ms. Cook. You do not,  
4 as I understand it, represent the official position of  
5 City, is that correct.

6 MS. COOK: I'm representing Council Member  
7 Williams, but I'm not here making comments. I'm here for  
8 observation.

9 HEARING OFFICER VALKOSKY: Thank you.

10 Okay. The way we'll proceed today, we've gotten  
11 comments on a baker's dozen of the topic areas discussed  
12 in the Presiding Member's Proposed Decision. What I'd  
13 like to do is proceed on a topical area. And  
14 fundamentally, I think the format will be I have some  
15 questions, there are certain changes to the conditions  
16 proposed by one or another of the parties in each of those  
17 topic areas. So we'll just march through the topic areas.  
18 The more complex of topic areas will be the last three or  
19 four that we'll cover. Well attempt to get the easier  
20 ones done first.

21 Is there any question on that?

22 By the way, I would like everyone to recognize if  
23 you had a made a comment and I don't have a question on  
24 it, that means nothing as far as the acceptability in the  
25 Committee's eyes of the comment. It just means that the

1 Committee understands the comment and it has no ambiguity  
2 to that which is to clarify.

3 Any questions?

4 None.

5 All right. The first topic, project description.

6 Mr. Harris, I've got one question for you. In your  
7 comments you indicate that the applicant made no  
8 representation regarding sales. To my recollection of the  
9 record, one of your witnesses, when testifying to the  
10 benefits of the project would create specifically based  
11 his study on the assumption that the sales would be in the  
12 State of California. Is there something I'm missing here,  
13 Mr. Harris.

14 MR. HARRIS: I'll have Mr. Abreu address that.

15 MR. ABREU: The point of that study was to show  
16 that the project added supply to the State, it would  
17 provide financial benefits. And no matter who we were to  
18 contract with, in terms of selling the power, that would  
19 increase the supply in the market of which California is  
20 part of the market.

21 HEARING OFFICER VALKOSKY: Right, but I believe  
22 the transcript says one of the specific assumptions was  
23 that the power would be sold in California, which is to be  
24 captured in the --

25 MR. ABREU: I believe that was a simplifying



1 assumption he made for the staff.

2 HEARING OFFICER VALKOSKY: So you're saying that  
3 is not necessarily the case?

4 MR. ABREU: It's not necessarily the case that we  
5 would contract to sell the power within California, but  
6 all the power would, you know, physically go into  
7 California.

8 MR. HARRIS: Let me see if I can clarify it a  
9 little further. The transmission benefits, the study done  
10 of the local system affects, looked at the impact on the  
11 Metcalf natural service area. And so I guess regardless  
12 of the commercial transactions that take place, I think  
13 we're all in agreement this electrical perspective the  
14 energy will be consumed within that natural service area  
15 for the Metcalf Energy Center, so I think that's the point  
16 we were trying to reach with our policy testimony.

17 MR. ABREU: And what I would add in that analysis  
18 that was done of the economic benefits, he simply made a  
19 simplifying assumption of looking at it within the  
20 California market, but the California market is part of a  
21 broader market, and that's the market price that would be  
22 set that would be lowered by bringing the new resources on  
23 line.

24 Also, other benefits like the R&R benefits and  
25 stuff would have to be one specific California contract.

1 So some of the conditions might require a California  
2 contract.

3 HEARING OFFICER VALKOSKY: Okay. Thank you for  
4 that clarification. Is there anything from any of the  
5 other parties on that clarification?

6 I see none.

7 Next on alternative and I would just like to  
8 note -- to recognize Santa Teresa's arguments. And I'd  
9 also like to note that some of the clarifications  
10 suggested by staff would be acceptable. Anything on that  
11 topic from any of the parties.

12 MR. GARBETT: I have --

13 HEARING OFFICER VALKOSKY: I'm sorry do you a  
14 comment, Mr. Garbett?

15 MR. GARBETT: Yes. On the alternatives there are  
16 many that were excluded by the very description of the  
17 project and the very beginning. There was and a priori  
18 conclusion that predominated the hearing --

19 HEARING OFFICER VALKOSKY: Mr. Garbett, we're not  
20 rearguing the substance of the case, okay. That point was  
21 made. The Committee dealt with it as it did in its  
22 decision. I'm looking for changes based on the PMPD as  
23 the starting point.

24 MR. GARBETT: Yes. The changes is the way the  
25 hearings were conducted and the fact that alternatives

1 could not be brought forth in a meaningful manner because  
2 of the action of the committee itself. Testimony was  
3 basically limited whenever they deviated from the use of  
4 recycled water in the project. Parties that were  
5 intervenors were unequal.

6           The testimony was limited for certain parties  
7 when they got on sensitive issues. And for that reason,  
8 meaningful arguments could not be brought forth. Further  
9 more, during the course of the project, emergency  
10 regulations were instituted creating a digital divide,  
11 where, for instance, those people empowered with computers  
12 could basically have them connected, and other parties,  
13 even though they may have computers, could not, accept or  
14 get information on the project.

15           Specifically, the transcripts were never provided  
16 to parties in order to make argument briefs. The public  
17 was in inadvertently impacted through these emergency  
18 regulations. And the disregard for intervenors and the  
19 public, in general, is basically in the proposed  
20 regulations that have been going before the Commission.

21           For these things you need to look at other  
22 alternatives that were not considered, such as the water  
23 and the supply, for instance, the 160 acre pond on the  
24 Cisco project, the Coyote Valley Research Park was never  
25 looked at as a source of water.

1           HEARING OFFICER VALKOSKY: Okay. Mr. Garbett, we  
2 understand your comments that you don't agree with staff  
3 alternatives as they were considered.

4           That is closed however. What was considered is  
5 what's considered. So that's the way it is. As far as --  
6 I'm just going to address real quickly two of your other  
7 points.

8           There are no emergency regulations that apply to  
9 this particular project. This particular project has gone  
10 under our preexisting regulations. And as far as the  
11 availability of the transcript, those were available seven  
12 to ten days after the hearing, were available through our  
13 dockets office or our Public Adviser to anyone who had so  
14 requested.

15           MR. GARBETT: I requested both the dockets office  
16 and the Public Adviser. The Internet was unavailable.  
17 And that was the only format in which --

18           HEARING OFFICER VALKOSKY: I understand the  
19 Internet was not available to you. I have not comments.  
20 They should have made them available to you.

21           MR. GARBETT: And those emergency regulations  
22 were instituted in the middle of the project, towards the  
23 beginning, pardon me?

24           HEARING OFFICER VALKOSKY: I understand your  
25 perspective, sir.

1           Mr. Harris.

2           MR. HARRIS: Just one comment on staff's comments  
3 on alternatives. On the second bullet page 437, in  
4 suggesting replacing lines 1 through 5. I was actually  
5 happy or okay with the way lines 1 through 5 were written.  
6 And I'm not sure that the suggested changes clarify that.  
7 And so I don't have any specific language for you on that.

8           I guess I would note my general position that I  
9 would be perfectly happy if the language in the FSA were  
10 to remain as it is.

11          HEARING OFFICER VALKOSKY: On the second  
12 bullet --

13          MR. HARRIS: Yes.

14          HEARING OFFICER VALKOSKY: -- page 437, that was  
15 NOT necessarily one of the changes that the Committee  
16 contemplated making, tentatively contemplated making.

17          Okay, the next topic, joint topic, is  
18 transmission system, engineering/local system affects.  
19 Basically, you note Santa Teresa's argument regarding  
20 moving the plant.

21          Through at least a brief inspection, staff's  
22 comments seem largely acceptable. And I'll note that  
23 applicant wants to change a portion of condition TSE 1  
24 appearing at page 82 of the PMPD.

25          Mr. Harris, could you explain the reason for that

1 change?

2 MR. HARRIS: I think the idea here, again, is to  
3 give us a little more flexibility. We have a little bit  
4 more detail now that we've gone into more detailed  
5 suggestions with PG&E. And this I think, is intended to  
6 allow us to put together a configuration that meet PG&E's  
7 standards as the transmission owner. So it's not intended  
8 to be a substantive change, but more of giving us some  
9 flexibility.

10 HEARING OFFICER VALKOSKY: And Ms. Willis, staff  
11 reaction to that proposed change?

12 STAFF COUNSEL WILLIS: I believe our TSE witness  
13 was agreeable to that change.

14 HEARING OFFICER VALKOSKY: Okay, no objection  
15 then, that's staff position.

16 Any other party?

17 MR. AJLOUNY: What, on page, 82 which one was  
18 that?

19 HEARING OFFICER VALKOSKY: TSE, I believe, it's  
20 subsection C is that it? It's Condition 1.

21 MR. HARRIS: Page 82, TSE 1, Item C as in  
22 Charlie.

23 HEARING OFFICER VALKOSKY: It's specified on  
24 applicant's -- on page -- the first page of the comments.  
25 Okay.

1 MR. AJLOUNY: No problem.

2 HEARING OFFICER VALKOSKY: Mr. Garbett, no other  
3 party?

4 Thank you. Next topic, fourth topic, is  
5 hazardous materials management. Applicant has proposed  
6 some relatively minor changes.

7 Mr. Harris, could you explain them, please.

8 MR. HARRIS: Yes. The first proposed change is  
9 just to clarify the hours when the delivery of the  
10 material to be made. The condition is written said, "but  
11 only after 6:00 p.m." We thought we ought to bracket that  
12 by having a beginning time and an ending time. So we  
13 suggested between the hours of 6:00 p.m. and 7:00 a.m.  
14 just to clarify that that would be allowed.

15 Okay. Do you want me to go through the other one  
16 as well?

17 HEARING OFFICER VALKOSKY: Yes.

18 MR. HARRIS: The second one relates to safety  
19 features incorporated the design of the pipeline. The  
20 pressure on line of 300, I guess, is 715 PSIG. And we've  
21 asked that the language be amended and basically strike  
22 out the gas pressure 400 and add in 740 PSIG.

23 HEARING OFFICER VALKOSKY: Okay. Ms. Willis,  
24 staff position on this changes?

25 STAFF COUNSEL WILLIS: Once again we believe

1 staff was agreeable to those changes.

2 HEARING OFFICER VALKOSKY: Comments from any  
3 other parties on the proposed changes?

4 MR. GARBETT: Does this pipeline pressure affect  
5 the ANSI safety factors that go into that pipeline?  
6 Although, it was originally proposed at 400 PSI in the  
7 upper end of the pressure there. Is there a different  
8 ANSI standard as far as the thickness of the walls of the  
9 pipeline?

10 MR. HARRIS: Can I answer?

11 MR. GARBETT: That's just a question.

12 MR. HARRIS: This simply correcting a factual  
13 inaccuracy. The 400 was for a different PG&E line, the  
14 line of 300 pressure, as I've stated and revised, so it  
15 was factually inaccurate.

16 MR. GARBETT: But does that throw you into a  
17 different wall thickness of the piping?

18 MR. HARRIS: No, the piping is as they described  
19 it. The piping is as described in the application and in  
20 the PMPD.

21 HEARING OFFICER VALKOSKY: Okay. Anything else?  
22 Issa.

23 MR. AJLOUNY: I just want to add for  
24 consideration that in Silicon Valley here we have quite a  
25 bit of traffic and people are still out, even after 6:00.



1 I didn't make it a big issue in my original comments.  
2 It's not a major thing, but, you know, something more in  
3 lines of after 7:00 p.m. And, you know, maybe nothing  
4 until 5:00 a.m., because at 6:00 or 7:00 in the morning  
5 our, you know, we have -- as a matter of fact at 5:00 in  
6 the morning, your commuter trains are in use.

7           So there's just quite a bit of traffic and things  
8 like that and people out still running round trying to get  
9 home. So I think just if we're going to make it safe, we  
10 might as well go with a better time slot. From 6:00 to  
11 7:00 I think we'd have the same concern. We might as well  
12 make it 24 hours a day at any time, because you still have  
13 the same concerns at those times.

14           HEARING OFFICER VALKOSKY: Mr. Harris, any  
15 reaction. We have the proposal changes between 6:00 p.m.  
16 and 7:00 a.m. to between 7:00 p.m. and 5:00 or 6:00 a.m.  
17 for HAZMAT, Condition Haz 3.

18           MR. HARRIS: Yeah. Just a couple of thoughts.  
19 The 7:00 a.m. was selected, really it related to the  
20 concerns about child care center and the workers in the  
21 proposed CDRP project. And so those hours were selected.

22           I might also note that we checked with the  
23 suppliers about the delivery during these hours they think  
24 the works. I haven't checked a different set of hours, so  
25 it would be difficult for me to respond to those.

1 HEARING OFFICER VALKOSKY: Fair enough. Thank  
2 you.

3 Anything else on HAZMAT?

4 Waste Management. The only question I have for  
5 applicant is you indicated dropping the auxiliary boiler  
6 from Table 1 on page 215. Did you want to drop that whole  
7 row? I was a little confused here to your topic. It  
8 starts with CO catalyst units and then it goes to  
9 auxiliary boiler, page 215 Table 1.

10 MR. HARRIS: Our comments go to page 212, so  
11 that's why I'm --

12 HEARING OFFICER VALKOSKY: Right, but it's --

13 MR. HARRIS: Oh, I'm sorry in addition to that  
14 you found another one. I'm sorry, Mr. Valkosky, where  
15 does it appear?

16 HEARING OFFICER VALKOSKY: Table 1.

17 MR. HARRIS: Yes I've got it.

18 HEARING OFFICER VALKOSKY: It's starts midway  
19 down, the first column on the left you've got CO catalyst  
20 units. Next column you've got auxiliary boiler. Okay,  
21 are you following me?

22 MR. HARRIS: I am.

23 HEARING OFFICER VALKOSKY: And as I understood  
24 your comments, you wanted to delete auxiliary boiler from  
25 that portion of the table, right?

1           MR. HARRIS: I'm talking to Mr. Rubenstein here.  
2 If there's going to be a CO catalyst, I guess you would  
3 replace the auxiliary with HRSG.

4           HEARING OFFICER VALKOSKY: With HRSG?

5           MR. HARRIS: Yeah, replace auxiliary boiler with  
6 HRSG, assuming again oxidation catalyst.

7           HEARING OFFICER VALKOSKY: Okay. And then the  
8 three to five years, that would all remain the same?

9           MR. HARRIS: Yes. Thank you for that correction.

10          HEARING OFFICER VALKOSKY: Thank you. Okay.  
11 Staff, you proposed changes to Condition Waste 4, page  
12 219. Could you explain those changes, please, briefly.

13          STAFF COUNSEL WILLIS: My understanding is that  
14 this proposed change is based on updated comments from the  
15 Department of Toxic Substances Control. And staff has  
16 been using this condition in other projects and wanted to  
17 include it in this one.

18          HEARING OFFICER VALKOSKY: Okay. So is it fair  
19 to say then, the purpose of this change is just to achieve  
20 consistency with other Commission decisions in the same  
21 manner.

22          STAFF COUNSEL WILLIS: Yes.

23          HEARING OFFICER VALKOSKY: Applicant, Any  
24 comments on that?

25          MR. HARRIS: We would agree with staff on this

1 one.

2 HEARING OFFICER VALKOSKY: Okay. Comments from  
3 other parties?

4 No comments, thank you.

5 The next topic is Biological Resources. The  
6 first question is for applicant. You indicate your belief  
7 that finding ten biological resources is incorrect. Could  
8 you explain that to me, please.

9 MR. HARRIS: Yes, sir. Hold on. I think the  
10 reason that we flagged this one is there is a difference  
11 between the riparian corridor and the setback area. The  
12 language here talks about the riparian corridor setback.

13 MR. AJLOUNY: Do you have a page?

14 HEARING OFFICER VALKOSKY: 245.

15 MR. HARRIS: The first issue there is the  
16 clarification as to whether they're talking about the  
17 actual corridor or the setback air. The other -- and I  
18 think what's intended here is the setback area not the  
19 corridor itself. So I think that's all right.

20 The other concern we have is it says it does not  
21 conform with the City of San Jose's pertinent guidelines.  
22 We were unable to locate in the record any of the  
23 guidelines. We had heard a stated preference by the City  
24 that there be no activities in the setback area, again,  
25 focusing on the setback area not the corridor. But we

1 didn't find any guidelines that suggested that you  
2 couldn't temporarily be in the setback area, again,  
3 avoiding at all times the corridor. So that's why we took  
4 issue with this particular finding.

5 HEARING OFFICER VALKOSKY: It's my recollection,  
6 and maybe, Ms. Willis, you can clarify me if I'm wrong,  
7 but did not staff indicate that the project would not  
8 comply with the City's setback, 100-foot setback.

9 MR. KNIGHT: This is Eric Knight. The project  
10 would provide 100-foot setback to this particular riparian  
11 corridor. So it would comply with the setback  
12 requirement. It just doesn't comply with some of the  
13 other guidelines --

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. KNIGHT: -- in terms of noise.

16 HEARING OFFICER VALKOSKY: Okay. Mr. Knight, and  
17 I'm reading from page 175 of the February 15th, 2001  
18 transcript. And specifically Ms. Willis at lines 13 to  
19 15. "And other than that, does the project comply with  
20 all local ordinances and regulations and standards?" at  
21 lines 16 to 18. Ms. Speigel, staff's witness, "They don't  
22 strictly adhere to City guidelines. The noise and the  
23 100-foot setback."

24 So where are we?

25 COMMISSIONER LAURIE: Don't you just hate when

1 lawyers do that?

2 MR. KNIGHT: Well, it was my understanding that  
3 the facility itself was setback, the structure and  
4 buildings are setback a minimum of 100 feet from the  
5 riparian corridor.

6 HEARING OFFICER VALKOSKY: As I understand issue  
7 was a temporary disturbance in the setback area, which is  
8 prohibited under the guidelines.

9 MR. KNIGHT: And I can't speak to that. I dealt  
10 with the structural setbacks and the land use. And I know  
11 that there is some temporary activities there, and that  
12 was assessed by the biology resources, so Linda Speigel is  
13 probably correct.

14 MR. HARRIS: Mr. Valkosy what page are you on?

15 HEARING OFFICER VALKOSKY: 175 of the February  
16 15th transcript. Portions I read from lines 15 to 18.  
17 And then the Ms. Speigel clarifies it further down at  
18 lines 20 to 25.

19 STAFF COUNSEL WILLIS: Mr. Valkosky, our staff  
20 biologist did review the entire section and didn't report  
21 to me that she disagreed with this finding. She's not  
22 here tonight, but that was my understanding.

23 HEARING OFFICER VALKOSKY: I'm sorry, did you say  
24 she agreed or disagreed with it?

25 STAFF COUNSEL WILLIS: Well, I said she did not

1 disagree with it, so, yeah, she agreed with the finding.

2 HEARING OFFICER VALKOSKY: She agreed with the  
3 finding. Yeah, I don't want to beat this to death, but if  
4 there is something that the committee is missing here, if  
5 somebody could bring it to our attention.

6 MR. HARRIS: I guess I'd call your attention to  
7 the bottom of that page. Ms. Spiegel is talking about the  
8 100-foot setback the City has requested that no  
9 construction occur in that area. That was certainly the  
10 City's request that nobody go into the setback area. The  
11 City was clear that that was their preference.

12 Our point here is that we didn't see anything in  
13 the policy, a LOR that specifically required that nobody  
14 ever enter a temporary disturbance into that area. So the  
15 issue here is more of whether there's LOR at issue or not.

16 HEARING OFFICER VALKOSKY: Right, I agree. It is  
17 a LOR issue. And I think that's what the Committee based  
18 that finding on, specifically was Mr. Spiegel's testimony  
19 that it is not in strict adherence, due to the temporary  
20 disturbance in the setback area. I think we have  
21 discussed this enough.

22 MR. AJLOUNY: Can I add, Stan.

23 HEARING OFFICER VALKOSKY: Certainly.

24 MR. AJLOUNY: Issa, Mr. Ajlouny. On page two of  
25 the document that was turned in by the City, I think there

1 is one -- the reasons didn't show up is that they turned  
2 in this document.

3 HEARING OFFICER VALKOSKY: Issa, I have no idea  
4 what you're referring to.

5 MR. AJLOUNY: Okay. Eric, I think you -- do you  
6 want to help me out here.

7 HEARING OFFICER VALKOSKY: Is this the July 27th  
8 LORs consistency table from the City of San Jose?

9 MR. AJLOUNY: It's the table that the Commission  
10 has asked for a table.

11 HEARING OFFICER VALKOSKY: Right. So that's --

12 MR. AJLOUNY: I think Eric Knight put it  
13 together, right.

14 MR. KNIGHT: I passed it on from the City of San  
15 Jose. I didn't put it together.

16 MR. AJLOUNY: Whatever the words are, based  
17 through that document, I just received it today, and maybe  
18 I'm off the wall here. I think it's like what 5th block  
19 down. I think it's right there. It says that it does not  
20 meet it. "No project can provide adequate setback for  
21 trail and Wildlife. It requires a CEC override."

22 Actually, it's the project cannot. That's, you  
23 know, what you're talk about. Do you see that?

24 HEARING OFFICER VALKOSKY: I do. Thank you.

25 MR. AJLOUNY: No problem. I'm only here to help.



1           MR. GARBETT: There's a question I have there.  
2 The 100-foot setback, shall we say, is established by an  
3 ordinance in the City of San Jose. However, it is not  
4 that inflexible. For instance, during the construction  
5 phase, the applicant is going to have to do certain  
6 modifications of the riparian corridor as depicted earlier  
7 in the other documents that have been presented, the  
8 Preliminary and the Final Staff Assessment.

9           And they are going to have to go into the area.  
10 As far as making it a staging area during construction and  
11 other such things, I think there needs to be something.  
12 But after the construction area, is shown, shall we say be  
13 left to the riparian corridor by itself without needless  
14 incursion, except for minor maintenance by the applicant.

15           HEARING OFFICER VALKOSKY: Right. No, and again,  
16 we were just looking at this from a compliance point of  
17 view. Thank you for that clarification.

18           MR. GARBETT: And speaking to the late submission  
19 of the LORs from both the County and the City, these here,  
20 neither have been ratified by the political body as being  
21 accurate, and they were after the briefing schedule.

22           HEARING OFFICER VALKOSKY: We understand that,  
23 Mr. Garbett. The sheet provided by staff indicates that  
24 there are the opinions of the respective staffs of those  
25 governmental agencies.

1           MR. HARRIS: Mr. Valkosky, I'd also point your  
2 attention to the Final Staff Assessment on page 202,  
3 there's a discussion of this issue, and I don't want to  
4 belabor this point anymore, but --

5           HEARING OFFICER VALKOSKY: Okay, thank you, Mr.  
6 Harris.

7           Next, both applicant and staff proposed changes  
8 to conditions Bio 7 and Bio 9. In addition, applicant  
9 proposes conditions -- changes excuse me, to condition  
10 Bio10.

11           Okay, is there an acceptable version, since you  
12 both proposed changes to some of the conditions, so can we  
13 dispense with a version of Bio 7 and 9 and move on to ten  
14 or not?

15           MR. HARRIS: I think we're in substantial  
16 agreement here, unless, I'm missing something. In  
17 particular, whose words are used, I mean, I don't really  
18 have a preference. They are both saying 30 days prior to  
19 stream bed alteration disturbances and that's the key.

20           HEARING OFFICER VALKOSKY: Are you referring to  
21 condition Bio 7?

22           MR. HARRIS: Yes.

23           HEARING OFFICER VALKOSKY: Okay. Ms. Willis, any  
24 preference between your version and applicant's version?

25           STAFF COUNSEL WILLIS: We'd prefer our version.

1 (Laughter.)

2 HEARING OFFICER VALKOSKY: Okay, that's fine.

3 Mr. Harris, is staffs changes to Bio 7 acceptable?

4 MR. HARRIS: I think so. Yes, I'm going to go  
5 out on a limb and say yes. We'll use the limb as a  
6 metaphor for biology.

7 HEARING OFFICER VALKOSKY: How about Bio 9, we  
8 have the same situation?

9 MR. HARRIS: I think so long as the changes are  
10 picked up in both the condition and in the verification,  
11 we're fine with that. I like our language.

12 HEARING OFFICER VALKOSKY: Ms. Willis.

13 STAFF COUNSEL WILLIS: We would agree. I think  
14 the --

15 HEARING OFFICER VALKOSKY: You would agree to  
16 which?

17 (Laughter.)

18 STAFF COUNSEL WILLIS: That the changes need to  
19 be made in both the condition and the verification,  
20 whatever the changes may be.

21 HEARING OFFICER VALKOSKY: So whose version,  
22 applicant's or staff's?

23 STAFF COUNSEL WILLIS: Linda Speigel wrote the  
24 changes that are represented in our comments. As she  
25 stated, these were -- these should have been done,

1 actually, in the FSA, so this is what would have been  
2 presented at the time.

3 I believe they're substantially the same, but I  
4 think our version is just clear on streambed alteration  
5 disturbance, and there's just said stream bed disturbance.  
6 I'm not sure if there's an important difference to that  
7 language.

8 MR. HARRIS: We'll, accept staff's language, if  
9 that helps.

10 HEARING OFFICER VALKOSKY: Okay, thank you.

11 Next, Mr. Harris, explain your reasons for the  
12 changes to Bio 10.

13 MR. HARRIS: This is the pessimistic lawyer view  
14 of the word. The condition -- the verification that was  
15 written said within one week of project certification. I  
16 would love to believe that we're going to be able to break  
17 ground and begin construction on this project within one  
18 week of project certification, but it may not be the case  
19 for a myriad of reasons.

20 And so what we've suggested that it is a change  
21 to Bio 10 that would reflect ground disturbing activities  
22 as opposed to project certification as a trigger.

23 HEARING OFFICER VALKOSKY: Staff.

24 STAFF COUNSEL WILLIS: Considering that there's  
25 other activities going on in this project at other federal

1 other levels of government, I would agree that this change  
2 would be necessary.

3 HEARING OFFICER VALKOSKY: So you're agreeing  
4 with applicant's proposals?

5 STAFF COUNSEL WILLIS: Yes.

6 HEARING OFFICER VALKOSKY: Okay. As I have it  
7 between -- solely between applicant and staff, it will be  
8 staff's version of Bio 7 and 9, and applicant's changes to  
9 Bio 10, is that correct, Mr. Harris?

10 MR. HARRIS: Yes, sir.

11 HEARING OFFICER VALKOSKY: Ms. Willis.

12 STAFF COUNSEL WILLIS: Yes.

13 HEARING OFFICER VALKOSKY: Okay, any comments  
14 from the other parties?

15 MR. AJLOUNY: Stan, I'm just going to ask you to  
16 help me out here. Is this saying that -- can you give me  
17 a synopsis of what it's saying as far as when they can  
18 start disturbing the ground in layman's terms, please?

19 HEARING OFFICER VALKOSKY: I would hesitate to  
20 synopsise a party's position.

21 Ms. Willis.

22 I'm sorry, you're talking about Bio 10, right  
23 Issa? Which one are you talking about, specify a  
24 condition?

25 MR. AJLOUNY: Ten. The concern I have is when

1 they can start breaking ground.

2 HEARING OFFICER VALKOSKY: Okay, Mr. Harris.

3 MR. HARRIS: My understanding is that in terms of  
4 the Federal Air Permit, that process needs to be completed  
5 the EAB appeal that's pending, has to be completed before  
6 we can engage in, I think, substantial, costly, permitted  
7 activities. And so that would preclude things like pile  
8 driving.

9 Prior to that, though, I think we would be  
10 allowed to do a certain type of grading, site mobilization  
11 type work. But I would take ground disturbance to include  
12 that type of mobilization work, so before anything happens  
13 out there.

14 MR. AJLOUNY: So no ground disturbance until some  
15 of these appeals are completed, is what I'm hearing.

16 HEARING OFFICER VALKOSKY: Okay, other parties?

17 MR. GARBETT: Just I'd like you to use the wider  
18 term streambed rather than stream, because between the  
19 difference of high water and low water is a slightly  
20 larger standard. It's kind of insignificant but when you  
21 get into biology, a streambed does have a larger  
22 expansion.

23 HEARING OFFICER VALKOSKY: I would note, correct  
24 me if I'm wrong, Ms. Willis, but staff's version of Bio 7  
25 and Bio 9 both use the term streambed alteration

1 activities, is that not correct?

2 STAFF COUNSEL WILLIS: That would be correct.

3 HEARING OFFICER VALKOSKY: Okay. Anything else  
4 on biology?

5 MR. BOYD: Stan. Mike Boyd, CARE.

6 HEARING OFFICER VALKOSKY: Do you have of  
7 something on biology Mr. Boyd?

8 MR. BOYD: Yeah, I just was going to tell you  
9 that I've docketed CARE's appeal EAB. And basically all  
10 our comments on that subject are in that, I just wanted to  
11 make you aware of that.

12 HEARING OFFICER VALKOSKY: Thank you for that  
13 clarification.

14 Okay, next, Traffic and Transportation. And this  
15 topic area applicant has proposed changes to conditions  
16 Trans 4 at page 353, Trans 5 at page 354 and Trans 8 at  
17 page 355. Mr. Harris, if you'd briefly explain the reason  
18 for those changes?

19 MR. HARRIS: Yes. The changes to Trans 4 were  
20 designed to reflect the facts as we understand them, and  
21 entering into a crossing agreement with UPRR, that's Union  
22 Pacific Railroad, of course, under which they do the work  
23 in accordance with the standards of the Public Utilities  
24 Commission.

25 So essentially the changes here were meant to

1 correlate the conditions of the facts as we understand  
2 them. Again, the review, the plan has to be submitted for  
3 review. Every thing goes to the railroad. It does not  
4 have to go to the PUC, and so I guess under that second  
5 paragraph, the protocol, we've struck return to PUC and  
6 inserted the CPM as the Energy Commission's person.

7           The rest of those changes conform the project to  
8 the fact that the PUC was not involved in that review.

9           Trans 5, the change there was just some  
10 additional language. The First bullet, we were concerned  
11 that without the change the condition could be interpreted  
12 as requiring construction of a pipeline to be taking place  
13 only at night. I think the plan there really was to allow  
14 that to be one of the options to avoid disruption. And so  
15 we've added some language to that bullet to clarify that  
16 point.

17           Trans 8, again, some clarifying language. I  
18 think that it was relatively clear at the last -- from the  
19 PMPD what the Committee had intended. And we were more  
20 concerned about somebody picking this up a few years later  
21 without the background, understanding the factors that  
22 would be taken into consideration for the second access  
23 road would be whether the streets were available and  
24 whether we could render the rights to use this road  
25 system. So those are the clarifications.



1 HEARING OFFICER VALKOSKY: Thank you.

2 Staff response.

3 STAFF COUNSEL WILLIS: On Trans 4 staff does not  
4 have any problems with the suggestions made by the  
5 applicant.

6 On Trans 5 staff was okay with the change, but  
7 wanted to add to the third bullet where it says,  
8 "temporary travel lane closures" on page 354, in paren  
9 "outside of peak commute hours of 6:00 to 9:00 a.m. and  
10 4:00 to 7:00 p.m., unless approved by the reviewing  
11 agencies."

12 HEARING OFFICER VALKOSKY: Ms. Willis to my  
13 benefit, could you please repeat that?

14 STAFF COUNSEL WILLIS: Sure. This would be the  
15 third bullet on page 354.

16 HEARING OFFICER VALKOSKY: Could we go off the  
17 record a second.

18 (Thereupon a short recess was taken.)

19 HEARING OFFICER VALKOSKY: Back on the record.

20 You were dealing with Trans 5.

21 STAFF COUNSEL WILLIS: This would be the third  
22 bullet, "Temporary travel lane closures." Staff would add  
23 in parenthesis, "outside of peak commute hours of 6:00 to  
24 9:00 a.m. and 4:00 to 7:00 p.m., unless approved by the  
25 reviewing agencies." And that would just give it a little

1 more specificity.

2 HEARING OFFICER VALKOSKY: Mr. Harris, any  
3 reaction to that?

4 MR. HARRIS: I think that's just intended to  
5 clarify that, and that will be developed in the traffic  
6 control plan, so I don't have any problems with the  
7 suggested language.

8 HEARING OFFICER VALKOSKY: Okay. And Ms. Willis  
9 Trans 8?

10 STAFF COUNSEL WILLIS: And staff was okay with  
11 that condition as well.

12 HEARING OFFICER VALKOSKY: Okay. Other parties  
13 Trans 4, 5 with staff's additions and Trans 8, anything?  
14 Issa.

15 MR. AJLOUNY: My comment might be at a different  
16 point, because I did hear some new developments regarding  
17 the pipeline. And so maybe I can ask you where the  
18 appropriate time is to talk about that.

19 But as I understand it, Calpine is in talking to  
20 the City of San Jose of changing the route of the  
21 pipeline. Would that have anything to do with this piece  
22 or would we be talking about that later?

23 HEARING OFFICER VALKOSKY: No. This would be the  
24 place to talk about it.

25 MR. AJLOUNY: Okay. And I'm real concerned that

1 we went through this process and we're assured of the  
2 definite route of a pipeline. And now I hear that the  
3 City of San Jose basically is in a bad position for  
4 negotiations as the Mayor has told me face to face, and  
5 basically doesn't have a leg to stand on.

6 I feel that maybe the City of San Jose is being  
7 unfairly pressured to making some considerations when  
8 normally they wouldn't.

9 HEARING OFFICER VALKOSKY: Okay. Well, that  
10 concern we can't address here.

11 MR. AJLOUNY: That's fine. Well, so maybe you  
12 can address --

13 HEARING OFFICER VALKOSKY: We can't address that.

14 MR. AJLOUNY: -- it in the routing.

15 HEARING OFFICER VALKOSKY: The routing was  
16 specified, if not in this section in another section.

17 Mr. Harris, have there been modifications to the  
18 route as described on the record? You're talking about  
19 the pipeline now; is that correct?

20 MR. AJLOUNY: The recycled water pipeline.

21 HEARING OFFICER VALKOSKY: The recycled water  
22 pipeline.

23 MR. HARRIS: My understanding is -- this is all  
24 outside of this process. But my understanding there are  
25 discussions with the City of San Jose about finalizing the

1 route. The City understands the constraints I think that  
2 we're given. The decision covers only one route. We are,  
3 though, I think largely characterized properly as a  
4 customer here.

5           If the City of San Jose were to do something  
6 different than the route described in this document, there  
7 would have to be environmental clearances for that and we  
8 would back to come back and talk to you all about that.  
9 But as of this moment, the route is as described in the  
10 document.

11           HEARING OFFICER VALKOSKY: There you go. There  
12 is one route that has been analyzed in this document and  
13 that's what exists.

14           MR. AJLOUNY: So my comment is, if the CEC  
15 approves it, the five Commissioners say yes to this and a  
16 month later a new route is discussed, does that open up  
17 the processor or are you --

18           HEARING OFFICER VALKOSKY: That would open up the  
19 processor for any needed environmental review of a  
20 different route.

21           MR. AJLOUNY: Well, you can see my concern.

22           HEARING OFFICER VALKOSKY: Yeah, that would  
23 typically be done, typically, in an amendment process.

24           MR. AJLOUNY: Personally, as an intervenor, I'd  
25 like all the changes be brought forward before the

1 Commission would vote on it. I think it's only fair and  
2 right for the public.

3 HEARING OFFICER VALKOSKY: I think, Mr. Harris,  
4 has accurately clarified the understanding, applicant's  
5 understanding. You know, there is one route covered in  
6 this decision. That's the route. If that route changes,  
7 in any significant way, then that's another deal.

8 They have to review it. And we're dealing with  
9 this point in time.

10 MR. AJLOUNY: I understand, but I really enjoyed  
11 and thought the process of the way we did the hearings was  
12 accurate and timely for everyone to bring everything to  
13 light. And I just feel now that maybe expense might be an  
14 issue with Calpine and wanted a shorter pipeline that we  
15 don't have that same opportunity. That's all.

16 COMMISSIONER LAURIE: Let me clarify that this  
17 decision is based upon the evidence in the record today.  
18 And there's no new evidence that's going to come in. And  
19 so the decision has to be consistent, in our view, with  
20 the evidence. And this condition is consistent with the  
21 evidence that we have.

22 If, at such point in time, the evidence changes,  
23 then the conditions are going to have to change. And  
24 there's nothing that we can do about that.

25 MR. AJLOUNY: But will we be part of the process

1 to go through this routing?

2 COMMISSIONER LAURIE: Any modification to  
3 conditions, to the decision, if there's a positive  
4 decision, would be public process, and all parties would  
5 be invited to participate.

6 MR. AJLOUNY: But that doesn't hold up the  
7 project or anything like that, the project just continues?

8 COMMISSIONER LAURIE: It could hold up the  
9 project, if the condition is necessary to implement the  
10 project and has to be changed, it could hold up the  
11 project. I don't want to speculate about that.

12 MR. AJLOUNY: That's fine. I just feel that -- I  
13 would just hope that this corporations that are involved  
14 would be upfront in what's really going on and not play a  
15 timing game here and playing games with the State of  
16 California.

17 COMMISSIONER LAURIE: This Committee is using the  
18 evidence it has in front of it.

19 HEARING OFFICER VALKOSKY: Any other parties?

20 Mr. Garbett.

21 MR. GARBETT: I would like to bring out the  
22 internal inconsistency with the Commission between the PSA  
23 and FSA and the Final Proposed Decision.

24 In regards to that --

25 COMMISSIONER LAURIE: No. That subject is not on

1 point and will not be permitted at this point. If you  
2 want to address it in summary comments, you may do so.

3 MR. GARBETT: May I finish my sentence that I was  
4 going to say, in regards to the rooting of the recycled  
5 water pipeline.

6 Earlier the Commission had said that US Dataport  
7 basically blocked anything going under the Union Pacific  
8 Railroad tracks. But, in fact, you are putting pipelines  
9 under there. With this internal consistency, you would  
10 have to go and look at recycled water being in a joint-use  
11 trench, so to speak.

12 The question we have now is facts that are in  
13 evidence that were mentioned earlier, based upon the  
14 Commission's request, the applicant's request, the City of  
15 San Jose, the Local Agency Formation Commission already  
16 have, for instance, made decisions on 2 Alum Rock and  
17 Edendale number 21, districts that are, for instance,  
18 being brought into the city for the purpose of adding  
19 reservoirs for a regular drought of water, recycled water,  
20 consistent throughout the seasons.

21 And this is a significant factor in CEQA and this  
22 is supposed to be a CEQA document, and you should have  
23 either a supplement or an amendment as of this point in  
24 time, or for instance modify your decision as of tonight  
25 to go in and include those factors. These are facts in

1 evidence. They've been before the City Council prior to  
2 this memo of the 27th from the City.

3 HEARING OFFICER VALKOSKY: We don't know what's  
4 been before the City Council.

5 MR. GARBETT: Okay, but in which case, one of the  
6 things proposed early on in the project was the shortest  
7 route for the recycled water pipeline down Monterey Road  
8 and under the Union Pacific Railroad tracks. And that was  
9 one of the alternatives.

10 HEARING OFFICER VALKOSKY: Okay. Anything else  
11 on that topic?

12 MR. AJLOUNY: Could we add a condition of  
13 certification that only that one route is -- I know --

14 HEARING OFFICER VALKOSKY: I think --

15 MR. AJLOUNY: Could it be more specific.

16 HEARING OFFICER VALKOSKY: It's clear. The  
17 applicant will -- you acknowledge on the record that only  
18 one recycled water pipeline route has been analyzed and is  
19 considered in the proposed decision?

20 MR. HARRIS: Yes.

21 HEARING OFFICER VALKOSKY: Okay, there you go.

22 Next topic is soil and water. I'll note the  
23 Committee will certainly consider clarifications to  
24 address staff's comments.

25 Issa you've got a question regarding financing



1 the recycled water pipeline. Mr. Harris, do you have any  
2 response to the observation that the intervenor has  
3 raised?

4 MR. HARRIS: I guess I'd disagree with the  
5 characterization of the facts as he explained them. Other  
6 than that, I have no comment.

7 HEARING OFFICER VALKOSKY: Okay, thank you. I'll  
8 also note applicant's comments generally seem acceptable.  
9 You have, however, proposed a change to condition of Soil  
10 and Water 8 at page 279 of the PMPD.

11 Ms. Willis, does staff have a response to those  
12 proposed changes?

13 STAFF COUNSEL WILLIS: Staff's concern on the  
14 proposed changes were that the wells that were analyzed  
15 are not the wells, existing wells, 21 through 23. And it  
16 would concern us to rely on something alternate that has  
17 not been thoroughly analyzed as what was done in the  
18 project description.

19 We don't have an opposition. In fact, we would  
20 probably prefer using existing structures. However, they  
21 haven't been fully analyzed.

22 HEARING OFFICER VALKOSKY: So in other words,  
23 staff opposes the changes proposed by the applicant to  
24 Condition Soil and Water 8?

25 STAFF COUNSEL WILLIS: Yes.

1                   HEARING OFFICER VALKOSKY: Anything in response,  
2 Mr. Harris?

3                   MR. HARRIS: Let me speak little bit more about  
4 our intent here, and maybe it's not clear immediately from  
5 the language, and maybe that will help.

6                   I guess, first off, the ground water modeling  
7 that took place to look at the new two proposed wells did,  
8 in fact, include an analysis of wells 21, 22 and 23. The  
9 underlying assumption that drove, I think, the process  
10 towards the possible addition of two new wells was the  
11 assumption, the planning assumption, that wells 21, 22 and  
12 23 were dedicated to the CBRP project.

13                  And with that understanding, applicant went out  
14 and did a groundwater analysis, assuming that condition  
15 and assuming our needs. That's why the two additional  
16 well sites were developed. There is some question as to  
17 how quickly the CBRP project will proceed, number one.  
18 And number two, I think we were looking to give the local  
19 water retailer the maximum flexibility in terms of when  
20 the two new wells go in.

21                  And so we're not in anyway suggesting that the  
22 two wells would never go in. What we're looking for is  
23 giving the local supplier the ability to put those wells  
24 in when needed. So if the CBRP on project is coming on  
25 line soon and it's apparent that those wells are needed,

1 then they will be put in then.

2           If there is some substantial delay in the CBRP  
3 project and the local retailer is of the opinion that they  
4 can serve us from the existing three wells, recognizing  
5 our continuing obligation to put two in later, if it  
6 becomes necessary, that's the kind of flexibility we were  
7 shooting for with this condition.

8           So I guess, really oversimplifying things and it  
9 didn't make sense for us to sink two additional wells if  
10 they were yet required. And we were looking to give folks  
11 the flexibility to sink them when it's appropriate.

12           HEARING OFFICER VALKOSKY: Ms. Willis.

13           STAFF COUNSEL WILLIS: We still feel that they  
14 weren't sufficiently analyzed to this project. And we  
15 were under the understanding that wells 21 through 23 were  
16 dedicated to the CBRP project. I think they're listed as  
17 part of their Environmental Impact Report as part of that  
18 project, and that's why staff required the two new wells  
19 to be built.

20           HEARING OFFICER VALKOSKY: Okay. So even in  
21 light of Mr. Harris's explanation of the intent of the  
22 condition, staff continues to oppose the changes proposed  
23 sought by applicant to Soil and Water 8, is that correct?

24           STAFF COUNSEL WILLIS: We don't oppose the  
25 intent. I think we just oppose the fact that we don't

1 feel sufficient analysis has taken place.

2 MR. ABREU: Mr. Valkosky, this is Ken Abreu. One  
3 comment up a little higher your comment on finding number  
4 9. And that's where we addressed this we believe those  
5 wells were analyzed, and they are in the record.

6 COMMISSIONER LAURIE: What page are you on?

7 MR. ABREU: Our comments.

8 HEARING OFFICER VALKOSKY: Page six of their  
9 comments.

10 MR. ABREU: If you go a couple comments up,  
11 you'll see our comments on page 275, Finding number 9.  
12 Finding number 9 says that San Jose maintenance district  
13 installed groundwater supply wells 21 through 23 alone are  
14 not sufficient groundwater sources for the project.

15 And our comment on that is the findings is  
16 factually incorrect, that to be true there is analysis  
17 done, that was put in the record and testified to  
18 including the analysis that showed that the water would be  
19 sufficient for those wells.

20 COMMISSIONER LAURIE: And do you believe that  
21 testimony shows up in the record that you're able to site  
22 page numbers.

23 HEARING OFFICER VALKOSKY: Are those citations --

24 MR. ABREU: We have the citations there in our  
25 comments, in parenthesis Exhibit 40 page 6 and 38.

1                   MR. HARRIS: Let me chime in here too. The  
2 report we're referring to is the Groundwater Report. That  
3 report was the basis for the determination that there  
4 would be, you know, two new wells added to the project.  
5 My understanding is the modeling assumptions for that  
6 groundwater report did assume that wells 21, 22 and 23  
7 were being used by the CBRP project.

8                   And so, in that respect, I guess I take issue  
9 with the characterization that they weren't analyzed. I  
10 think they were actually a foundation of the model for the  
11 groundwater report.

12                  HEARING OFFICER VALKOSKY: Okay. Well, I don't  
13 think we're going to resolve this here. I think we'll  
14 have to revisit the existing evidence and make a  
15 determination based upon that.

16                  Comments from other parties?

17                  MR. AJLOUNY: Well, Stan, just to understand the  
18 process here. My comments about the water line, the  
19 applicant totally thinks is off the wall, my words. But  
20 can we discuss this a little bit.

21                  HEARING OFFICER VALKOSKY: Not really. It's not  
22 in the record.

23                  MR. AJLOUNY: Well, I found it in Condition of  
24 Certification, Soil and Water 9.

25                  HEARING OFFICER VALKOSKY: Okay, explain that

1 then.

2 MR. AJLOUNY: Okay.

3 HEARING OFFICER VALKOSKY: I just didn't recall,  
4 and I certainly can --

5 MR. AJLOUNY: Sorry. I'm just not a lawyer.

6 HEARING OFFICER VALKOSKY: No. I mean as far as  
7 the discussion on the financing in the testimony.

8 MR. AJLOUNY: Well, condition of certification of  
9 Soil and Water 9.

10 HEARING OFFICER VALKOSKY: Okay, what page is  
11 that?

12 MR. AJLOUNY: That's page 280. Let me know when  
13 you're ready there.

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. AJLOUNY: The first sentence, "The project  
16 owner shall design, construct and fully fund the  
17 portion..." and so forth. And the word fully fund to me,  
18 the way I read it, is fund the cost of the recycled  
19 pipeline. And in the hearing, and I can't say exactly  
20 where, but I know it was reemphasized and I know it's not  
21 part of the testimony here or in this record, but the City  
22 of San Jose, when it was spoken about, it was 15 to 18  
23 inches are needed pipeline for Metcalf Energy Center.

24 Well, again, if that is the size pipeline that's  
25 going to be built just for Metcalf, I think Soil and Water

1 9 should be real specific if that's what you need for  
2 Calpine to fund that pipeline, because right now the City  
3 of San Jose has been manipulated to only have Calpine pay  
4 50 percent. If that pipeline is only built for Calpine,  
5 the City of San Jose is going to pay 50 percent of  
6 whoever, you know, going to --

7 HEARING OFFICER VALKOSKY: Okay, Issa, as far as  
8 the City of San Jose paying 50 percent, are you saying  
9 that's in the record?

10 MR. AJLOUNY: That part is not in the record,  
11 Stan. Because of me living in San Jose and going to the  
12 hearing, I pointed this out to the City of San Jose in  
13 their hearings. And they weren't very clear if that  
14 really meant for Calpine to pay for the pipeline.

15 HEARING OFFICER VALKOSKY: I certainly can't  
16 speak for the City.

17 MR. AJLOUNY: That's fine. I'm asking you, as an  
18 intervenor, to make that clear if you wanted it to be  
19 stated that way, Stan, that do you really mean that  
20 Calpine is responsible for paying for the pipeline if it's  
21 built solely for Calpine Metcalf Energy Center. And  
22 that's the point I'm only making.

23 HEARING OFFICER VALKOSKY: And correct me if I'm  
24 wrong, staff, but since this is, I believe, and unchanged  
25 staff condition, it would seem to me that the condition

1 means whit says, "The project owner shall design,  
2 construct and fully fund that portion of the reclaimed  
3 water supply pipeline dedicated to an essential for the  
4 operation of the project." Is there any nuance I'm  
5 missing here?

6 STAFF COUNSEL WILLIS: No, it says what it says,  
7 and I mean that was our intent.

8 HEARING OFFICER VALKOSKY: Okay. Mr. Harris is  
9 there any disagreement with that?

10 MR. HARRIS: I think we would read to the next  
11 sentence just so we're all clear. First off, I agree with  
12 you that the language is pretty unambiguous. The next  
13 sentence as well continues on in the condition.

14 HEARING OFFICER VALKOSKY: Right, that's an  
15 alternative.

16 MR. HARRIS: Right and alternative right. But  
17 yeah, I think the language is extremely clear and fully  
18 fund that portion of dedicated and essential to the  
19 Metcalf Center.

20 HEARING OFFICER VALKOSKY: So, yeah, it means --

21 MR. AJLOUNY: That's exactly the point, Stan.  
22 And I don't want you to get in the City of San Jose's  
23 business and I know it's not part of the record, but I'm  
24 asking you as an intervenor to please make it very clear,  
25 because I know the great detail that's being manipulated



1 on the City of San Jose.

2           And just as Mr. Harris just mentioned let's read  
3 on to that second sentence. That second sentence is being  
4 interpreted that they don't have to fully fund if it's  
5 just for them. So all I'm asking is that something is  
6 clear so when it comes the City of San Jose knows that if  
7 that pipeline is built they Calpine is responsible for it.

8           I'm asking for your help, Stan, in clearing it.  
9 That's all. So if you could, you know, make it very  
10 simple and because of the second sentence, the lawyers of  
11 the City of San Jose are being pressured to interpret  
12 that --

13           HEARING OFFICER VALKOSKY: Issa, we are not  
14 interested in the position of the City of San Jose.  
15 That's there --

16           MR. AJLOUNY: Fine. You know, Stan. I don't  
17 blame you.

18           HEARING OFFICER VALKOSKY: They can take care of  
19 themselves.

20           MR. AJLOUNY: I don't blame you for not being  
21 interested. I am. I live here. I'm asking you as an  
22 intervenor just to make it clear. It sounds like everyone  
23 here agrees that Calpine is responsible. I'm telling you  
24 behind closed doors when we all are gone things are  
25 interpreted differently. I'm asking you make it clear.

1 HEARING OFFICER VALKOSKY: Okay.

2 MR. AJLOUNY: Please make it clear.

3 HEARING OFFICER VALKOSKY: Thank you for your  
4 comments. Maybe I'll consider them.

5 Anything else?

6 MR. GARBETT: Point of clarification. On the  
7 flow of the three wells and any future wells, one of the  
8 things that was done during the hearings is they cited the  
9 need for flow testing to go and ensure the reliability.  
10 Was that report ever done, are those tests ever made? The  
11 question is, at this point the time, they should have been  
12 filtered down to the staff, and I don't believe it has.

13 Also, with regards to the funding, the City of  
14 San Jose has put a community facilities district in which  
15 is being funded with taxpayer money subject to some obtuse  
16 formula for repayment that will basically leave other  
17 facilities not paying their fair share in the end and the  
18 taxpayers are going to get stuck with the bill, because of  
19 the criteria of repayment within that structure.

20 HEARING OFFICER VALKOSKY: Okay. Mr. Garbett,  
21 that sounds like a municipal issue. There is nothing --

22 MR. GARBETT: We talked about the previously --

23 HEARING OFFICER VALKOSKY: -- the Commission  
24 could do about this.

25 MR. GARBETT: -- about this scam.

1 Thank you.

2 HEARING OFFICER VALKOSKY: If the City is  
3 operating within its parameters, then it's operating  
4 within its parameters. If you disagree with them, I think  
5 you have to take it to them.

6 COMMISSIONER LAURIE: Mr. Valkosky, I want to go  
7 back to Soil and Water 9 in the first few sentences. And  
8 the first sentence is clear to me. The second sentence  
9 seems to indicate that, and I guess I do need  
10 clarification. The first sentence says that the project  
11 owner constructs and fully funds.

12 The second sentence seems to indicate that the  
13 project owner may enter into an agreement to have somebody  
14 else construct. And I think what is at issue is in the  
15 second sentence if an agreement for construction is  
16 entered into so that the applicant does not actually do  
17 the construction, does the same provision, the first  
18 sentence, to wit, fully fund their portion apply. That  
19 is, if there is -- if, I think, the second sentence says  
20 there to allow an alternative to the first sentence if the  
21 project owner does not actually do the construction.

22 In the first sentence its conditioned upon the  
23 project owner fully funding it. The second sentence  
24 doesn't make any reference to if an agreement is entered  
25 into when somebody else does the construction, is the

1 project owner still obligated to fully fund their portion  
2 as they are in the first sentence?

3 I think that is what the inquiry is. And if the  
4 intent is to fully fund their portion, then it shouldn't  
5 make any difference whether they construct or they enter  
6 into an agreement to construct.

7 HEARING OFFICER VALKOSKY: Ms. Willis what was  
8 staff's intent?

9 COMMISSIONER LAURIE: Because, there's no harm in  
10 entering into an agreement to construct. If they  
11 construct beyond what's needed, then they can get a  
12 reimbursement agreement.

13 STAFF COUNSEL WILLIS: I believe that was staff's  
14 intent that it would be -- they would either construct  
15 it -- the applicant would be either construct the pipeline  
16 themselves or enter into agreement to have it constructed  
17 and fully fund the portion that would be dedicated.

18 COMMISSIONER LAURIE: Okay, so if you read the  
19 second sentence --

20 STAFF COUNSEL WILLIS: I mean, there may need  
21 some clarification in the second sentence.

22 COMMISSIONER LAURIE: So it staff's intent and it  
23 would be the way that I would read it, but I think,  
24 perhaps, clarification is required.

25 STAFF COUNSEL WILLIS: I believe that's what we

1 intended it to say.

2 COMMISSIONER LAURIE: Would you also have any  
3 objection if there is reference made to the fact, and I  
4 done know if it would be applicable, but sometimes you  
5 oversize the facility, in which case you can enter into a  
6 reimbursement agreement to get refunded for that which is  
7 beyond your portion and we have no reason to inhibit that.

8 STAFF COUNSEL WILLIS: And I believe that first  
9 sentence on the, "...fully fund the portion of the  
10 reclaimed water supply line dedicated to and essential for  
11 the operation," meant that if it is oversized, they  
12 wouldn't -- that wouldn't be part of that dedicated part.  
13 It would only be the portion of the pipeline dedicated to  
14 the project.

15 COMMISSIONER LAURIE: And in your view, the same  
16 condition should apply to the second sentence?

17 STAFF COUNSEL WILLIS: Correct.

18 HEARING OFFICER VALKOSKY: Mr. Harris, is that  
19 consistent?

20 MR. HARRIS: I guess, I'm not sure what you're  
21 proposing to change for the second sentence. I see  
22 dedicated and essential to both the sentences, and so help  
23 me out, I'm sorry.

24 COMMISSIONER LAURIE: The issue in the second  
25 sentence, again. The first sentence says that you're

1 going to fund your portion. The second sentence provides  
2 you an alternative that you don't have to construct you  
3 can enter into an agreement to construct, somebody else  
4 needs to construct.

5           What is lacking is any reference in the  
6 alternative that you fully fund your portion as you're  
7 obligated to do in the first alternative.

8           MR. HARRIS: I guess, my assumption is that is  
9 what would be covered by the agreement, those kind of  
10 details.

11           COMMISSIONER LAURIE: I think what we're hearing  
12 is that there is concern expressed that a deal could be  
13 cut with the City, for whatever reason, which would not  
14 require you to fully fund. Mr. Ajlouny was that your  
15 expressed concern?

16           MR. AJLOUNY: That's My expressed concern, and it  
17 was expressed to my by the City Council of the City of San  
18 Jose.

19           MR. HARRIS: I guess we'd have a couple of  
20 thoughts. The reason this is presented as an alternative  
21 is because, you know, the Metcalf project is essentially a  
22 customer here. And that's --

23           COMMISSIONER LAURIE: I'm sorry what?

24           MR. HARRIS: A customer of recycled water. We  
25 understand the existing California law in terms of

1 requirements for capital costs and O&M costs that relate  
2 to these things. And I think that the reason that the  
3 second portion was put in there is to move us into that  
4 proper category, being a customer, and so the agreement  
5 for the construction of that portion of the line.

6 And, again, I think the key phrase in the  
7 alternative is the, "dedicated and essential to," that  
8 allows you to do the scope of the agreement. That would  
9 essentially cover the scope of what we're dealing with.

10 MR. ABREU: I'd like to add -- this is Ken Abreu.  
11 You know as a customer of recycled water, we need the  
12 flexibility to work with the suppliers on working out an  
13 arrangement that is commercially workable for the supplier  
14 and for us. We need that flexibility, I believe, to be  
15 able to, you know, move forward in a reasonable manner.

16 I don't think that can be spelled out here who  
17 exactly funds what.

18 MR. HARRIS: I guess from a legal perspective, I  
19 would note as well, that the City of San Jose has certain  
20 legal parameters that they have to operate in for these  
21 type of agreements. And I think the assumption ought to  
22 be that they do and they will despite things we're hearing  
23 outside the record. There's nothing in the record that's  
24 evidence to the contrary.

25 MR. AJLOUNY: Well, let's open and I'll enter

1 transcripts.

2 MR. GARBETT: It was opened during the  
3 evidentiary hearings.

4 COMMISSIONER LAURIE: Okay. Well, we understand  
5 the issue.

6 MR. AJLOUNY: Commissioner, I do thank you for,  
7 again, helping me with my words and at least understanding  
8 my concerns.

9 COMMISSIONER LAURIE: I understand you very well.

10 MS. CORD: Can I just ask does that mean -- this  
11 is Elizabeth Cord, Santa Teresa's Citizens Action Group.

12 Can I ask if that means that there is going to be  
13 a change in the language?

14 COMMISSIONER LAURIE: I don't know. We're going  
15 to talk about it. I understand what the issues are.

16 MS. CORD: Thank you.

17 HEARING OFFICER VALKOSKY: Anyone else on Soil  
18 and Water?

19 Next topic, Visual. As I understand the  
20 comments, the applicant proposes changes to condition of  
21 Vis 9 on page 388, vis 10 on page 390. And staff proposes  
22 changes to Vis 10, Vis 11 and Vis 12 on page 392.

23 I guess we'll just proceed getting the parties'  
24 reaction to the proposed changes. Applicant, could you  
25 indicate the purpose of your proposed changes to Vis 9 on



1 page 388?

2 MR. HARRIS: Yes. Thank you. Let me provide a  
3 little context and framework here. Essentially, I think  
4 what everybody was driving for is giving the City of San  
5 Jose and the local community the ability to have some  
6 input into the visual presentation of the power plant.

7 The proposed changes that we've made to Vis 9  
8 have one very simple intent. And that intent is to  
9 preserve the flexibility of the group reviewing this to  
10 propose visual changes to the project that are consistent  
11 with the parameters.

12 There's a permitting envelope we're working in  
13 for lack of a better term related the air quality  
14 monitoring, riparian corridors, those kind of things. And  
15 so our the architectural design doesn't have a blank slate  
16 to write on, but the changes that we've proposed here are  
17 to, I think, maximize flexibility.

18 It may very well be, and I'll go to the first  
19 specific change. We struck out discussions of exposed pop  
20 works, on the HRC units. It may very well be that that's  
21 considered. And our concern with the specificity here is  
22 that somebody again picking this decision up, you know,  
23 six months from now, a year from now might look at this  
24 language and say, well, you did not do the fifth thing in  
25 this list of eight or ten things.

1           And so what we did essentially was to strike out  
2 those specifics for that purpose. That is in the Vis 9  
3 condition, a conforming change is made, I'm moving out to  
4 page 8 of our comments on the top, the protocol, again  
5 striking out some of the specificity.

6           Again, there is a list of several things that  
7 could be considered. We replaced that with the term as  
8 appropriate, so not to eliminate any possibilities.

9           Let's see, the verification Mr. Abreu would like  
10 to talk about that verification.

11           MR. ABREU: On the verification item what we're  
12 talking about there is our desire to not let the final  
13 approval of the architectural improvement prevent the  
14 start of construction of the power plant itself. We're in  
15 the process with the City now to review the architectural  
16 treatment. They've outlined a process to us where they  
17 want it reviewed by various entities in the community and  
18 the City Council to provide comments to the CEC. That  
19 could take some time.

20           You know, nevertheless, we would like to be able  
21 to start the basic construction of the plant and let the  
22 final refinements of the architectural treatment not delay  
23 that, so that's why those words were added in so we can  
24 stay on schedule in getting the plant built, while at  
25 the same time work with the City to ensure we have all the

1 architectural features reviewed and properly brought  
2 forward.

3 HEARING OFFICER VALKOSKY: Okay. Does that  
4 conclude Vis 9, changes for Visual 9?

5 MR. HARRIS: Yes.

6 COMMISSIONER LAURIE: I have a question Vis 9.  
7 Is there any staff obligation to act within a given time  
8 frame regarding submittal of the architectural plans?

9 ENERGY FACILITIES LICENSING MANAGER RICHINS: Vis  
10 1?

11 COMMISSIONER LAURIE: Vis 1. There's no  
12 requirement for the CPM to respond in a set time frame, is  
13 that right?

14 STAFF COUNSEL WILLIS: And you're looking at Vis  
15 9 or Vis 1?

16 ENERGY FACILITIES LICENSING MANAGER RICHINS: Vis  
17 1 or Vis 9?

18 COMMISSIONER LAURIE: Well, I'm just asking the  
19 question, whether it's Vis 1 or Vis 9.

20 STAFF COUNSEL WILLIS: Well, on page 381 there's  
21 a requirement under Vis 1, the CPM will approve the plan  
22 within 30 days of receiving that notification. I think in  
23 various conditions there's time limits not on all -- Vis 2  
24 is the same, 30 days of receiving notification.

25 HEARING OFFICER VALKOSKY: But those, do they

1 not, talk to submission of information or revised  
2 information by the project owner not the response time by  
3 Commission's compliance project manager?

4 As I understand Commissioner Laurie's question,  
5 it is is there any specific response time by which the  
6 Commission's CPM must get back to the project owner?

7 STAFF COUNSEL WILLIS: I don't see anything  
8 specifically in here.

9 HEARING OFFICER VALKOSKY: I think my  
10 recollection there is not I believe that -- I frankly  
11 don't know if it was in this case or in other cases that  
12 have been proposed and is typically -- it's adoption is  
13 typically not favored by staff.

14 COMMISSIONER LAURIE: I'm sure it's adoption  
15 would not be favored by staff. My question was whether or  
16 not it was in there? And I don't see it.

17 My concern would be that if, in fact, we were to  
18 consider a proposal to require architectural review  
19 approval, but allow some construction to occur, i.e. you  
20 can't let construction get too far down the line, because  
21 the CPM is on vacation for two weeks or a month or two  
22 months, so I would want to consider, we don't have to talk  
23 about that today, but I want to make a note. I want to  
24 consider putting the CPM under some time management  
25 parameters, and treat you with the document, because also

1 we have nothing in here that talks about how the CPM is  
2 going to go about approving the plans, no indication  
3 whether the project manager is going to call a task force,  
4 hire consultants. There's flexibility. The CPM can do  
5 whatever the Commission wants them to do for the purpose  
6 of determining what's a right plan what isn't a right  
7 plan, which is fine, and maybe we want to encourage them  
8 to do that, but you can take six months to do it. And so  
9 I want to give that some thought.

10 HEARING OFFICER VALKOSKY: With those comments in  
11 mind, Ms. Willis, what does staff think about applicant's  
12 proposal to change Vis 9?

13 STAFF COUNSEL WILLIS: We have a couple of  
14 comments. The third sentence -- well, I'm looking at the  
15 applicant's page 7. In the third line, it says that  
16 they -- the word "may" need to be changed is used. And I  
17 believe the FSA said "shall", so we felt that the change  
18 in the word from "shall" to "may" added flexibility. We  
19 don't agree with crossing out the elements that are  
20 included, because we felt that that was guidance on what  
21 we were talking about.

22 And so we didn't agree with crossing that out,  
23 but we, on the next page, on page 8, would propose to,  
24 once again, I think it's the one 1, 2, 3, 4th line down  
25 where it says "shall include" change that to "may

1 include". But we just feel that the guidance of the  
2 specifics that we're talking about is important to include  
3 in the condition.

4 As far as the verification, we felt that that was  
5 a reasonable change.

6 HEARING OFFICER VALKOSKY: Mr. Harris, if I  
7 understand, Ms. Willis, and please, Ms. Willis, correct me  
8 if I'm wrong, you oppose the first part of the changes to  
9 Vis 9, that is those appearing on page 7 of applicant's  
10 comments. You would also not support the deletion on the  
11 top of page eight, but would change "shall" to "may". And  
12 you support the changes to the verification to Vis 9; is  
13 that correct?

14 STAFF COUNSEL WILLIS: That would be correct.

15 HEARING OFFICER VALKOSKY: Mr. Harris, any  
16 reactions or Mr. Abreu.

17 MR. ABREU: Yes. One of the things that it  
18 indicates in the part that we're striking out is that the  
19 struck architectural look will be like future buildings  
20 of the CBRP. And in our discussions with the City staff,  
21 they had asked us to look at alternative architectural  
22 treatments that, you know, we're not looking like a  
23 building that were more true to what we were actually  
24 building there.

25 And that's why we wanted to strike that out,

1 because it would be clear then that we would have complete  
2 flexibility to go either way in consultation with the City  
3 the final treatment, you know, might not look like a  
4 canvas structural but still these are architectural lines  
5 dealing with the surroundings.

6 HEARING OFFICER VALKOSKY: Okay, before you move  
7 off that, I guess it's my reading of the condition, I'm  
8 not sure how the existing condition, and specifically the  
9 portion you wish to delete, requires you to necessarily  
10 design a building like CBRP.

11 I mean the unchanged part of the condition,  
12 "Power plants shall be designed that helps visually  
13 integrate with its surroundings." Okay, that's a general  
14 statement.

15 "To accomplish these objectives, some elements  
16 that draw attention may need to be changed." Okay, "may  
17 need to be changed or may not need to be changed." And  
18 then in defining those specific elements that may need to  
19 be changed, the condition goes on for the next 7 or 8  
20 lines whatever it is.

21 So it's mandatory. As I'm looking at it, it  
22 seems to be more clarifying.

23 MR. HARRIS: We're discussing this on the fly  
24 over here, it may be that the first sentence that's struck  
25 out is the one that we think we had the most interest in

1 deleting, the sentence that goes into the specifics. The  
2 sentence beginning with the word changing. That's kind of  
3 a general description. I think I don't have as much  
4 problem with leaving that language in, because it's pretty  
5 generic.

6 But when you continue on to the next page, there  
7 is a specific reference to building -- needing the  
8 buildings. And so I guess, if, as a compromise, you  
9 wanted to strike -- take out the first sentence as  
10 suggested. If you wanted to put back in the paragraph --  
11 or the sentence that says, "Changing these elements is  
12 intended to help." To me that's just kind of a policy of  
13 the whole statement. I don't have any problem keeping  
14 that language. We just struck it for flexibility. The  
15 purpose may have struck too far.

16 But in contrast to, like I said, on top of page  
17 8, the language that's struck there does go on to say,  
18 "...similar to those buildings to be constructed with  
19 nearby campus industrial area." And I think that's the  
20 point Ken was making about having some flexibility to do  
21 something other than just a building design.

22 MR. ABREU: Ultimately, the applicant has to  
23 bring the design back with comments from the city to the  
24 CEC.

25 HEARING OFFICER VALKOSKY: Understood.



1 Understood. And again it's one of the questions  
2 specifying that. Again, I guess, I would read that first  
3 part on page 8, architectural character of probably future  
4 buildings consistent with campus area development as  
5 appropriate. Treatment changes may include power line,  
6 form texture patterns, et cetera. Again, I don't see  
7 anything that's really --

8 MR. HARRIS: It's the continuing operator.

9 HEARING OFFICER VALKOSKY: You know, certainly  
10 it's guidance, I agree, but it doesn't require anything.

11 MR. HARRIS: I'm sorry. I misspoke. I thought  
12 you were done. It's the continuing part. I guess the  
13 paragraph -- the sentence next to the last line,  
14 "...similar to those buildings to be constructed nearby in  
15 the campus industrial area." That's the portion that I  
16 we're concerned about. It's less the discussion of  
17 patterns, restoration materials, finishes and more the  
18 similar to.

19 HEARING OFFICER VALKOSKY: Okay, understood.

20 Staff have any further input on Vis 9?

21 STAFF COUNSEL WILLIS: I guess just once again, I  
22 would reiterate that we felt it was guidance and this was  
23 brought up in our test testimony that we disagreed with  
24 the applicant on their characterization of Vis 9 and be  
25 willing -- you know, supportive of the change made. And I

1 think that that would leave them the flexibility that they  
2 desire.

3 HEARING OFFICER VALKOSKY: Okay. The Committee  
4 understands concerns of the applicant and staff.

5 Any of the other parties have anything on Vis 9  
6 and it's just Vis 9 right now?

7 MR. AJLOUNY: Well, just a comment. Again, Stan,  
8 maybe I should just make an overall statement is that the  
9 tables have turned as far as, I will say in the beginning  
10 the CEC process I was fighting it, trying to not have a  
11 power plant come in.

12 Now, that there's, you know, the political  
13 situation, everything has changed, I'm looking at this CEC  
14 to protect us. And so with that, any restrictions in the  
15 Visual 9 and 10 that would protect us in the area of we  
16 can't count on the City of San Jose to protect us now,  
17 because, you know, of things that are going on  
18 politically. That's not part of the hearing, I  
19 understand.

20 So I'm asking, Stan, that things would be there  
21 to protect us. And I know it's Vis 9 now. I'll that  
22 statement. When we get to Vis 10 I'll make another  
23 statement.

24 HEARING OFFICER VALKOSKY: If it's the same  
25 statement, we'll just carry it forward.

1 MR. AJLOUNY: It's not. I'll get more detailed.

2 HEARING OFFICER VALKOSKY: Okay. Fair enough.

3 Any other parties is Vis 9 only Vis 9, please.

4 Mr. Garbett.

5 MR. GARBETT: I believe Mr. Laurie maybe looking  
6 for the way to -- in toward to give the applicant  
7 flexibility means there's quite a bit of litigation with  
8 CBRP and they're talking delays ten, 20 years possibly, is  
9 that Calpine may be the only building out there.

10 And I think what we kind of like Mr. Laurie to  
11 look at is to just go and put a one liner that the  
12 architectural details will be complete before commercial  
13 operation. Basically, it says we don't need a framework  
14 up there with no window dressing. It gives maximum  
15 flexibility of process, but they can't.

16 HEARING OFFICER VALKOSKY: Yeah.

17 MR. GARBETT: Until, you might say, it's  
18 essentially complete.

19 HEARING OFFICER VALKOSKY: Okay, thank you, Mr.  
20 Garbett.

21 Is there anything else on Vis 9 and just Vis 9?

22 Mr. Wade.

23 MR. WADE: Mr. Valkosky, Jeff Wade. I just  
24 wanted to add one other perspective and that is that this  
25 CEC reviews process has been based on particular

1 architectural structure, which is used for the air  
2 modeling. And if the Deviations that occur after the  
3 hearing process is complete are too extensive, it may  
4 cause a significant change in the modeling -- change in  
5 the ground level pollutants.

6 HEARING OFFICER VALKOSKY: I think that's a good  
7 point, Mr. Wade, and it certainly needs clarification,  
8 because, as I recall the testimony, I believe it was in  
9 closing, the stacks ale the way up would interrupt with  
10 the air quality modeling.

11 Mr. Harris, is there anything in these proposed  
12 changes that would affect that?

13 MR. HARRIS: I think what's in the process for  
14 architectural review, design deals with that issue,  
15 specifically -- I used the term permit envelope before.

16 What we have said to this city actually going  
17 back quite a ways in time, and to other folks who are  
18 interested in architectural design, that we want for them  
19 to take a look at the project and try to design something  
20 that they feel good about, but they're working with  
21 certain constraints.

22 And those constraints are primarily issues  
23 related to two things, number one, the air modeling and,  
24 number two, the visual impacts of the project. And so to  
25 the extent that the proposed architectural features Can

1 operate within this permitting envelope, we find them to  
2 be something that will be apart of the debate.

3 To the extent something that comes forward that's  
4 outside that permitting envelope, we consider that to be  
5 outside the scope of the charge of looking at an  
6 architectural structure. And so we're very much designed  
7 within that permitting envelope.

8 HEARING OFFICER VALKOSKY: So basically what  
9 you're saying in response to Mr. Wade's concern is that  
10 interfering with the air quality modeling is something  
11 that is clearly outside of the architectural envelope.

12 MR. HARRIS: Yeah, I have no desire to go there.  
13 And that's been clear from the beginning I think with you  
14 folks, you know, that we'll make it look purple with polka  
15 dots if people like that, no we won't, you're right. But  
16 the bottom line is that there are certain parameters in  
17 the permit envelope that work.

18 HEARING OFFICER VALKOSKY: No, I understand. I  
19 think the record adequately establishes those.

20 Anything else on Vis 9?

21 Ms. Cord.

22 MS. CORD: Yes, thank you, Mr. Valkosky. I  
23 wondered under verification on page 39, Vis 9, it says  
24 that, "The project owner shall submit the proposed  
25 architectural design treatment plan to the CPM for review

1 and to the City." Are intervenors going to be able to  
2 review those architectural plans, at that time, as well?

3 HEARING OFFICER VALKOSKY: I have no idea what  
4 the City's procedures are.

5 MS. CORD: No, I'm asking through the Energy  
6 Commission. Will intervenors to the process be permitted  
7 to intervene?

8 HEARING OFFICER VALKOSKY: Mr. Richins, will  
9 those typically be made available at request for the  
10 Intervenor.

11 ENERGY FACILITIES LICENSING MANAGER RICHINS:  
12 Yeah, at request. It wouldn't be a part of our normal  
13 process, but it would be at request.

14 HEARING OFFICER VALKOSKY: No, but what I'm  
15 saying is if Santa Teresa Citizen's Action Group requested  
16 that they be provided a copy of the architectural plans,  
17 would staff then provide?

18 ENERGY FACILITIES LICENSING MANAGER RICHINS:  
19 Yes.

20 HEARING OFFICER VALKOSKY: There you go.

21 MS. CORD: Mr. Richins, could you please make  
22 sure to provide us with the architectural plans.

23 MR. SCHOLZ: Scott Scholz, intervenor. I recall  
24 in the evidentiary hearings on this topic that we  
25 short-circuited a lot of the discussion regarding visuals,

1 because we didn't know what the ultimate design was going  
2 to be. And I thought the intent of VIs 9 was that since  
3 we went through that short-circuited process, that when it  
4 is ultimately designed that we would get a chance to  
5 review it.

6           And it looks to me like the only input we may  
7 have, if we get to see that design, is through the CPM,  
8 and he's going to ultimately decide if that design is  
9 okay. I just wanted to ensure that from the residents'  
10 point of view is we would like to review the design when  
11 it is ultimately mapped out, and, if that occurs, before  
12 construction begins.

13           COMMISSIONER LAURIE: We'll discuss that.  
14 Initially, I don't have any difficulty have the CPM follow  
15 some sort of public hearing process, and that's why I want  
16 time frames, because you can't take six months to approve  
17 architectural plans, but on the other hand, I agree we  
18 said the architectural plan is very important. We want to  
19 keep flexibility, and we don't want to take evidentiary  
20 time to do it, and so absolutely acknowledge that we felt  
21 we put it off for another day and not be shut out out on  
22 the process.

23           On the other hand, I want maximum flexibility to  
24 determine the best looking building that you can possibly  
25 develop a consensus on if a consensus is possible. But we

1 will ensure a public process.

2 MR. ABREU: Let me just add, this is Ken Abreu,  
3 we want public input as well. And we expect that through  
4 the City process that they'll be going to the community  
5 and asking for their input on the architectural  
6 improvements.

7 Our only concern really is about schedule to be  
8 able to get the construction started while that process  
9 may be under way, so that we can get the plant on line and  
10 have the architectural treatment completed in the time  
11 frame that's stated.

12 MR. HARRIS: And just to follow on that as well,  
13 I think the idea of having some kind of deadline in there  
14 is important, because if you look at the last sentence of  
15 the verification for VIs 9, it's pretty draconian.

16 It says essentially that 30 days prior to the  
17 start of commercial operation, the project owner shall  
18 notify the CPM in writing that all structures are ready  
19 for inspections.

20 If you read that strictly, I think you could have  
21 a situation where a power plant is ready to come up on  
22 line before the summer of '03. And that the last hang up  
23 might be the architectural design. So there's a very  
24 serious hammer in that end of that verification and I  
25 wanted to call that to everybody's attention.



1                   HEARING OFFICER VALKOSKY: Well, I assume you  
2 don't want to revisit in an evidentiary matter?

3                   MR. AJLOUNY: Yes, we do.

4                   (Laughter.)

5                   MR. HARRIS: That would be a correct assumption.  
6 Thank you.

7                   HEARING OFFICER VALKOSKY: Okay. That's Vis 9.  
8 Vis 10.

9                   MR. HARRIS: Okay. We have suggested some  
10 changes to VIs 10, consistent with a pretty simple idea.  
11 And that idea is that the idea of visible water vapor  
12 plumes, and I use those terms decidedly, visible water  
13 vapor plumes, the interesting and important time frame for  
14 considering those are during daylight, nonfog and nonrain  
15 hours.

16                   Essentially, those are the hours in which a plume  
17 would be noticeable. And so that's a standard, I think,  
18 that the Commission is looking at and coming around to  
19 using. And so the daylight, nonrain, nonfog hours is a  
20 very important concept.

21                   We, thus, have made two proposed changes to Vis  
22 10. The first one for the HRC stack, again, suggesting  
23 that those visible water vapor plumes not be visible  
24 during daylight, nonfog, nonrain hours.

25                   Similarly, the second bullet there for the

1 cooling tour, cooling tour plumes not be visible more than  
2 14 hours in a calendar year during daylight, nonfog,  
3 nonrain hours. So those are our suggested changes.

4 HEARING OFFICER VALKOSKY: Okay. And refresh my  
5 recollection, didn't your witnesses testify to the extent  
6 that a potential for visible plume formation would be five  
7 hours maximum, of five daylight hours per day?

8 MR. HARRIS: I guess for which met data set was  
9 that, that's the first question?

10 MR. AJLOUNY: What project?

11 HEARING OFFICER VALKOSKY: Okay. I'm referring  
12 to the recitation on page 365 of the decision. And I  
13 quote, it's in the -- about 7, 8 lines from the bottom.  
14 Quote, "After factoring in the weather data and  
15 considering daylight hours, however, applicant indicates  
16 that the project would potentially produce a visible plume  
17 five hours per year..." quote, "...during daylight hours  
18 when there is not fog or rain having a potential to  
19 obscure the plume," closed quote, various citations to  
20 exhibit 106 on the February 15th transcript.

21 Is that not a correct recitation of your  
22 testimony?

23 MR. RUBENSTEIN: This is Gary Rubenstein from  
24 Sierra Research.

25 I don't have that document in front of me, but I

1 believe that comment regarding five hours was with respect  
2 to San Jose data set that had been analyzed, as  
3 distinguished from the three other data sets that the  
4 staff witness had analyzed.

5           And I believe that we're talking about the  
6 recover steam generator as opposed to the cooling tower.

7           HEARING OFFICER VALKOSKY: But you're not sure?

8           MR. RUBENSTEIN: Well, actually as I further  
9 review, Mr. Harris's notes, it appears that it's  
10 definitely the recovery steam generator with the turbines  
11 that cooling tower numbers were higher than that. And I'm  
12 not sure from the context of your question just a few  
13 minutes ago whether you were asking in the context of the  
14 cooling tower or the turbines.

15           HEARING OFFICER VALKOSKY: I'm just asking for  
16 clarification, Mr. Rubenstein, that's all.

17           MR. RUBENSTEIN: I believe reference to five  
18 hours was to the Turbines, and it's with respect to one of  
19 the meteorological data sets that were analyzed.

20           MR. HARRIS: Mr. Valkosky, do you have a  
21 transcript citation so we can -- that you can give us.

22           HEARING OFFICER VALKOSKY: February 15th page 327  
23 lines 6 to 89, pages 323 to 326, in general, pages 395 to  
24 396, Exhibit 106 pages ten through --

25           MR. HARRIS: We're not enjoying reliving this,

1 but we're trying to get you the answers here in just a  
2 second please.

3 MR. AJLOUNY: Just trying to clear the fog a  
4 little bit.

5 MR. HARRIS: Nonfog, nonrain.

6 HEARING OFFICER VALKOSKY: Mr. Harris, if you'd  
7 like, I could go ahead to the other questions on visual  
8 and we could take a recess and take this up after the  
9 recess.

10 MR. RUBENSTEIN: That would be appreciated.

11 HEARING OFFICER VALKOSKY: That was really all I  
12 -- the Committee's interest is just getting this stuff  
13 clarified.

14 That's all.

15 Staff with those provisos, do you have any  
16 position on applicant's proposed changes to Vis 10?

17 STAFF COUNSEL WILLIS: We do. On the first  
18 bullet on page 8 under where I says VIs 10 it says they've  
19 crossed out -- they have plumes from these stacks at any  
20 height. Staff does not agree with the crossing out of any  
21 height.

22 And other than that, the addition of the during  
23 day-light, nonfog, nonrain house was acceptable.

24 HEARING OFFICER VALKOSKY: Other parties? And  
25 again just realize we're going to revisit Vis 10. We just

1 had preliminary counts on this.

2 Ms. Cord.

3 MR. AJLOUNY: Ladies first. I'm a gentlemen.

4 Issa ago. I'm sorry, I thought you were --

5 MR. AJLOUNY: Throughout the whole hearing and  
6 throughout the process, we kept on hearing zero plumes  
7 coming out of the HRSR, zero. I mean that's what I've  
8 always remembered.

9 And I know that that's been talked about in  
10 public. And I know that's not part of the hearing. So  
11 I'm just, you know, just amazed that now we're here at the  
12 final stages and things want to be changed to whether if  
13 it's daylight and if there's fog and what's the definition  
14 of fog. I mean how low is the fog, you know, that's a  
15 question right there, and nonrain hours. It just amazes  
16 me, Stan. So --

17 HEARING OFFICER VALKOSKY: Issa, please just  
18 focus on --

19 MR. AJLOUNY: I'm focusing. I'm focusing on the  
20 plume from the HRSR should be zero. And I agree with the  
21 14 hours in a calendar year like was proposed throughout  
22 this whole process, proposed conditions of certification.  
23 And I personally object to any changes of Vis 10.

24 HEARING OFFICER VALKOSKY: Okay. Other parties?

25 Mr. Garbett.

1           MR. GARBETT: There is a standard in the Bay Area  
2 Air Quality Control Users for opacity of 50 percent. That  
3 you might want to enter in there, but that would be a  
4 definition of a plume.

5           But what I am more concerned is not the number of  
6 hours per year, under what we might call the best case  
7 daylight hours or no fog and so forth. But I am concerned  
8 more about the worst case, which is nearby Monterey Road  
9 and Highway 101. The visibility that might be impaired  
10 under worst case conditions, such as night, where there  
11 already is a premonition of ground fog over there, and  
12 thus the plume proceeding at ground fog and blocking  
13 visibility on the nearby roadways. I'm more concerned  
14 about the worst of the worst, rather than the technical  
15 details on the best.

16           HEARING OFFICER VALKOSKY: Okay, thank you.

17           And, again, with the exception we'll revisit Vis  
18 10. We've got two proposed versions of Vis 11.

19           Mr. Harris, could we have the question again. I  
20 think we've got our documents now. I want to make sure  
21 the question that you asked.

22           HEARING OFFICER VALKOSKY: I'm sorry.

23           MR. HARRIS: The question about the five hours.

24           HEARING OFFICER VALKOSKY: Vis 10, yeah, I'm  
25 saying to a quick inspection, it seems that your testimony

1 established, or at least was to the effect, of factoring  
2 in weather date to et cetera, that there wouldn't be a  
3 visible plume more than five hours per year during  
4 daylight hours when there is not fog nor rain, having a  
5 potential to obscure the plume.

6           The question is is that or is that not correct,  
7 was it improperly qualified or what?

8           MR. RUBENSTEIN: This is correct.

9           HEARING OFFICER VALKOSKY: Okay. So then if  
10 there is that five-hour potentiality, then what is the  
11 necessity or the purpose of qualifying some of the  
12 provisions of Vis 10 as you've suggested?

13           MR. RUBENSTEIN: I'm not sure I understand your  
14 question. Is it because -- I can understand if what  
15 you're suggesting is that the number should be changed  
16 from 14 when we have the qualification, but I believe that  
17 the qualifications should still be added.

18           HEARING OFFICER VALKOSKY: Okay. Now go to your  
19 page 8 second bullet. "Plume tower plumes may not be  
20 visible for a total of more than 14 hours during daylight,  
21 nonfog, nonrain hours." Do you want to add that last  
22 part?

23           MR. RUBENSTEIN: Yes.

24           HEARING OFFICER VALKOSKY: Okay. I think I'm  
25 certainly confused, at this point, because I just heard

1 you say that it was correct that you had testified that  
2 there would only be five hours.

3 MR. RUBENSTEIN: Mr. Valkosky, the 14 hour number  
4 came from the staff's analysis, and that's where we're  
5 having a bit of a disconnect here.

6 HEARING OFFICER VALKOSKY: Okay, then explain  
7 that to me, please.

8 MR. RUBENSTEIN: The staff's condition as they  
9 proposed it was that there would not be a visible water  
10 vapor plume from the cooling tower during more than 14  
11 hours in a year. I'm not sure I can explain where this  
12 number came, but it was their condition.

13 What we're saying is that it's our understanding  
14 that the staff currently only believes that visible water  
15 vapor plumes are significant when they occur during  
16 daylight, nonrain, nonfog hours. That was the purpose of  
17 our clarification.

18 I think I understand your question to be that our  
19 clarification is now inconsistent with the number 14. And  
20 I believe your concern is well founded. And so this  
21 condition would be consistent with my testimony, if it  
22 indicated that it would be not more than five hours during  
23 nonrain, nonfog daylight hours.

24 HEARING OFFICER VALKOSKY: Okay. So is it fair  
25 then that on that bullet, "Cooling tower plumes shall not



1 be visible for more than a total of five hours in any  
2 calendar year during daylight, nonfog, nonrain hours?

3 MR. RUBENSTEIN: That would then be consistent  
4 with my testimony which was based on one year of  
5 meteorological data. And then I'll have to turn it back  
6 to Calpine to discuss, in terms of the risk and the  
7 practical operations, how we deal with that issue.

8 MR. HARRIS: Just to elaborate on that. This is  
9 Exhibit 97 in the record. One thing I want to point out  
10 too, in the bottom of that exhibit talks about the  
11 frequency of hours with ambient temperatures below 30  
12 degrees Fahrenheit, that number is five hours. So I  
13 think -- I don't know if the question was pose this way  
14 earlier, but if you were talking about an unabated power,  
15 remember our design point is 30 degrees at 90 percent.

16 So how many hours out of the year? San Jose,  
17 1992, there were five hours during that year when the  
18 temperature were below 30 degrees Fahrenheit. We didn't  
19 have relative humidity I believe for those periods, so  
20 we couldn't tell you how many hours there were for the 30  
21 degree Fahrenheit 90 degree relative humidity would have  
22 come into play.

23 So I think that's the genesis of the five hours,  
24 is based on the 1992 meteorological data.

25 HEARING OFFICER VALKOSKY: Okay. Let me try to

1 attack this in a different way.

2 As I understand the intervenor's concerns, it's  
3 how many hours per year will a plume come out of the  
4 plant, okay. And we can talk about data and  
5 clarifications of testimony. Right now, we have a  
6 five-hour figure in the record and we have a 14-hour  
7 figure in the record, okay.

8 What's the correct one? That's what I want to  
9 know. And I think that's what the intervenors want to  
10 know.

11 MR. HARRIS: Are you asking whether the 14 and  
12 the condition ought to be five?

13 HEARING OFFICER VALKOSKY: Yes.

14 MR. HARRIS: The answer is clearly no. And let  
15 me explain why. The five-hour -- again let me back up.

16 How often are you going to have a plume. That's  
17 going to be determined by your meteorological data. The  
18 1992 San Jose meteorological data shows five hours at  
19 temperatures below 30 degrees Fahrenheit. Our design  
20 point for the tower is 30 degrees F, 90 degrees relative  
21 humidity.

22 So the five hours in the record is correct as the  
23 number of hours below 30 degrees Fahrenheit in San Jose.  
24 The 14-hour, as Mr. Rubenstein indicated, came from  
25 staff's analysis. Staff used several different sets of

1 meteorological data. They used, I think, that data from  
2 San Martin, PG&E, IBM, San Jose, and I'm probably getting  
3 this wrong, but those are also in the record as well.

4           The issue then, I guess -- that's all by the way  
5 of background. So the answer to your question is both  
6 numbers are correct, the five hours are a correct number  
7 for the San Jose data for one year. And the 14 is the  
8 number proposed by staff. Well, why would staff propose a  
9 number different than 14?

10           Quite simply to allow for potential variations in  
11 meteorological conditions. Their may be no years when  
12 temperatures are below 30 degrees and there may be years  
13 when there are more during, again nonfog, daylight, you  
14 know, nonrain hours.

15           And so I think that the condition was written to  
16 allow for the flexibility and variability of the weather  
17 patterns as well. And so there is --

18           HEARING OFFICER VALKOSKY: So you're saying it's  
19 a maximum of 14 hours per year that the plume would be  
20 visible during daylight, nonfog, nonrain hours.

21           MR. HARRIS: We believe with the power design and  
22 the likely anticipated predictability in the weather that  
23 that leaves us sufficient margin to operate within those  
24 parameters.

25           HEARING OFFICER VALKOSKY: Okay. Staff, do you

1 have a position on that? Do you agree with applicant's  
2 characterization?

3 STAFF COUNSEL WILLIS: Staff's testimony did not  
4 make the distinction between the nonrain, nonfog, daylight  
5 hours. So, at this point, I mean that's -- and the 14  
6 hours was based on our original testimony. I discussed  
7 this with our visual resource analyst before we came, and  
8 he was not opposed to the change to the daylight, nonfog,  
9 nonrain hours. Beyond that, I'm not really able to  
10 comment.

11 HEARING OFFICER VALKOSKY: Okay. Vis 11, we've  
12 got two versions, applicant's version --

13 MR. MITCHELL: Before we go to Vis 11, I think  
14 there's some more comments.

15 HEARING OFFICER VALKOSKY: I'm sorry. Mr.  
16 Nelson, is it?

17 MR. MITCHELL: Phil Mitchell, Santa Teresa  
18 Citizen Action Group.

19 I just wanted to point out one thing I think  
20 might be helpful. On page 367 of your proposed decision,  
21 third paragraph, it says in some much of the discussion of  
22 record seems to be concerned with preventing potential  
23 floods of the visible plume when the evidence establishes  
24 this potential is extremely slight to begin with.

25 And if it occurs, it will only occur in very

1 limited Meteorological circumstances for a minimum number  
2 of annual hours. We therefore conclude no significant  
3 impacted will result in the projects visible plumes to the  
4 extent such plumes occur at all.

5           It seems to me this former discussion kind of  
6 flies in the face of that comment and goes to whether or  
7 not this impact is really significant or not.

8           HEARING OFFICER VALKOSKY: I would just note, it  
9 could also be characterized as trying to fix the number  
10 five or 14. And then the question becomes what either of  
11 those numbers are significant. That's just an  
12 observation.

13           MR. MITCHELL: Well, I'm speaking not to the  
14 number of hours. I'm speaking to excluding to large  
15 numbers of hours, ala during fog and rain conditions,  
16 which I submit is not a minimum number of annual hours.

17           HEARING OFFICER VALKOSKY: Okay.

18           MR. MITCHELL: Secondly, I wanted to comment on  
19 the verification of this condition. I see nothing in the  
20 proposed condition of verification.

21           HEARING OFFICER VALKOSKY: I'm sorry what was  
22 your comment, Mr. Mitchell, on the verification? We're  
23 talking about the verification to VIs 10, correct?

24           MR. MITCHELL: Correct.

25           HEARING OFFICER VALKOSKY: Okay. And your

1 comment is?

2 MR. MITCHELL: I didn't see any hard proposal for  
3 how it's going to be verified that they indeed stay below  
4 the 14 hours, if that's the chosen per year.

5 HEARING OFFICER VALKOSKY: As in please, Ms.  
6 Willis, correct me if I'm wrong, but there will be a plume  
7 abatement plan submitted to the Compliance Project  
8 Manager. The Compliance Project Manager would have to  
9 approve that plume abatement plan. That would be the  
10 enforcement mechanism; is that correct?

11 STAFF COUNSEL WILLIS: That's my understanding.

12 MR. MITCHELL: What about the assurances or the  
13 statements that were made earlier during the testimony  
14 regarding putting cameras for verification or a camera for  
15 verification? I don't see any mention of that.

16 HEARING OFFICER VALKOSKY: I believe that is a  
17 recognized -- or it's in the decision as of viable method.  
18 No, I believe it is -- did you check the text of the  
19 decision?

20 MR. AJLOUNY: I remember reading it.

21 HEARING OFFICER VALKOSKY: You do remember  
22 reading it?

23 MR. AJLOUNY: 367, I think the statement is not  
24 in the condition of certification, you know.

25 MR. MITCHELL: There's a statement at the bottom

1 of 367, "We have therefore modified condition Vis 10 based  
2 on applicant's suggestions, and have also incorporated  
3 monitoring cameras, as suggested, by various agreements as  
4 a means of verifying compliance." I didn't see it in  
5 actual Vis 10.

6 HEARING OFFICER VALKOSKY: Gotcha.

7 MS. CORD: But actually in the verification  
8 portion of Vis 10, I don't see it repeated. So it almost  
9 sounds more like a suggestion than an actual requirement.

10 HEARING OFFICER VALKOSKY: No, I think that's a  
11 fair observation. I think that's legitimate, that it  
12 should be called out and incorporated in there.

13 MR. AJLOUNY: That's what I wrote in my comments.

14 HEARING OFFICER VALKOSKY: Yeah. That's one of  
15 the -- I thank you for clarifying that. I can assure you  
16 that its omission was not intentional. It's one of those  
17 things that --

18 MR. AJLOUNY: Again, I'm not a lawyer.

19 MS. CORD: But we can read.

20 MR. AJLOUNY: I guess, Stan, what my point is  
21 that because we're not lawyers we're not taken seriously.

22 HEARING OFFICER VALKOSKY: Okay.

23 MR. MITCHELL: For the record, I'd like to  
24 introduce Santa Teresa Citizen Action Group's attorney  
25 Steve Volker on my right.

1           HEARING OFFICER VALKOSKY: Sir, would you spell  
2 your name for the record, please.

3           MR. VOLKER: Stephen, S-t-e-p-h-e-n. Volker V as  
4 in Victor -o-l-k-e-r.

5           HEARING OFFICER VALKOSKY: And will you be  
6 representing the Santa Teresa Citizen Action Group.

7           MR. VOLKER: Yes.

8           HEARING OFFICER VALKOSKY: Are you functioning as  
9 their spokesperson for the rest of today's proceeding?

10          MR. VOLKER: No, I'm here largely as an observer.  
11 I may make comments from time to time.

12          HEARING OFFICER VALKOSKY: Okay.

13          Ms. Cord.

14          MS. CORD: Thank you. On Vis 10, it's my  
15 observation this condition of 14 hours has been discussed  
16 and proposed since at the time of the PSA, which is over a  
17 year ago. I haven't seen applicant bring -- I think the  
18 applicant has failed to bring forward any credible  
19 evidence that nondaylight, nonfog, and nonrain are  
20 conditions that are not of a concern. I don't know where  
21 that description comes from and I don't see any evidence  
22 to back that up.

23          HEARING OFFICER VALKOSKY: Ms. Cord, we're just  
24 focusing on the comments that have been submitted on the  
25 decision. We're not rearguing the issue. We've done that



1 in hearings already. This is the starting point right  
2 here, the contents of the Committee's proposed decision as  
3 supplemented by the comments that the various parties  
4 submitted.

5 MR. AJLOUNY: Stan, I think I'm going to add Mrs.  
6 Cord's concern and it's my concern too, is I think not  
7 arguing Vis 10 or, you know, what was in the hearings, but  
8 we're talking about comments of Vis 10. And I think the  
9 pointed should be recognized that the applicant had plenty  
10 of time to show concern about Vis 10 and issues with VIs  
11 10.

12 And it's like, almost like, for us a, what do you  
13 call it, surprise testimony or surprise -- it's like  
14 surprise, we're going to change at the last minute. We  
15 feel a little off guard on that. I mean, if there was a  
16 concern or an issue, I thought it should have been brought  
17 up sooner.

18 HEARING OFFICER VALKOSKY: I can understand that  
19 perspective.

20 MR. AJLOUNY: So I'd really appreciate it if  
21 you --

22 HEARING OFFICER VALKOSKY: I think it's a  
23 legitimate perspective.

24 MR. AJLOUNY: I hope you can order --

25 MS. CORD: Then why did you tell me not to say

1 that, just curious.

2 HEARING OFFICER VALKOSKY: We're not rearguing  
3 it. We are focusing on -- we're focusing on the comments  
4 and suggestions from applicant, staff, yourself and the  
5 three or four other parties. That's what we're doing;

6 MS. CORD: Exactly. I believe the applicant is  
7 asking --

8 HEARING OFFICER VALKOSKY: We're clarifying the  
9 meaning for the benefit of the Committee. We're not going  
10 to reargue it. That's one of the factors the Committee  
11 can consider when it considers on what changes to  
12 incorporate.

13 COMMISSIONER LAURIE: Lets go on to 11.

14 HEARING OFFICER VALKOSKY: Vis 11. We have two  
15 versions. Mr. Harris, would you explain your version and  
16 whether or not it differs from staff's.

17 MR. HARRIS: How, about if I just agree to  
18 staff's language. Let me explain this Basically, our  
19 understanding is that there is the City of San Jose and  
20 Santa Clara County Department, County Parks and Recreation  
21 Department, meaning both the City and the county had a  
22 Park and Recreation department. This is typo thing almost  
23 in that respect.

24 If staff wants to say City of San Jose and  
25 capitalize the Department for Santa Clara County we would

1 agree to that, assuming that it's factually correct, and  
2 we'll take staff's word on that.

3 HEARING OFFICER VALKOSKY: I think we're talking  
4 about located along the Fisher Creek corridor adjacent to  
5 the power plant site. And staff has some slightly  
6 alternative language, as I recall. I mean is there any  
7 substantive difference here. Are --

8 HEARING OFFICER VALKOSKY: Your language as  
9 opposed to staff's phrase. And I quote, "If the trail is  
10 build along fisher creek between Blanchard Road and the  
11 railroad tracks," closed quote.

12 MR. HARRIS: I think I'm my understanding. The  
13 staff-proposed language involves the plan that we don't  
14 control, between Blanchard Road -- and let me let Dr.  
15 Priestly, explain.

16 DR. PRIESTLY: Yeah, I think the language that  
17 we're proposing is a little bit more precise, in terms of  
18 identifying the land that is actually under the control of  
19 the project by being quite specific. The portion of the  
20 creek corridor adjacent to the power plant, meaning that  
21 part that's actually on the power plant parcel, this does  
22 not extend all the way down to Blanchard Road.

23 So there's a section their between Blanchard Road  
24 and the power plant parcel, which isn't under the  
25 jurisdiction of the project.

1           HEARING OFFICER VALKOSKY: Okay. You think your  
2 language better captures it?

3           DR. PRIESTLY: Yeah.

4           HEARING OFFICER VALKOSKY: Fine. Any response,  
5 Mr. Willis? Any preference with that explanation between  
6 your proposal and staff's proposal?

7           STAFF COUNSEL WILLIS: I understand their  
8 explanation. I think the wording that is stated in our  
9 proposal is if a trail is built along Bishop Creek, and  
10 it's just for clarity purposes, and I don't think it  
11 substantively changes the condition.

12          HEARING OFFICER VALKOSKY: So you're saying you  
13 prefer your version capture the contingency?

14          STAFF COUNSEL WILLIS: Yes.

15          HEARING OFFICER VALKOSKY: Is that your position?

16          STAFF COUNSEL WILLIS: That's our position.

17          HEARING OFFICER VALKOSKY: All right, anything  
18 else on Vis 11 any other parties?

19          No. Okay, last Visual condition, which is 12.  
20 This is staff's proposed change.

21          Ms. Willis, could you explain that, please?

22          It seems fairly self evident to me.

23          STAFF COUNSEL WILLIS: Yeah, I believe it was  
24 just to make compliance, to ensure compliance, and just to  
25 make sure the time of when compliance would need to be

1 employed.

2 HEARING OFFICER VALKOSKY: Yeah, that's what it  
3 appears to be to me. Mr. Harris do you have any comment  
4 on adding that sentence of verification to Vis 12, as  
5 reflected on page 10 of staff's comments?

6 MR. HARRIS: I think that is okay. Basically,  
7 let me make sure I'm understanding. It's essentially  
8 providing a timeframe, assuming we are able to get the  
9 approval of those property owners, that we will then make  
10 the changes and then notify the CPM when they're  
11 implemented?

12 STAFF COUNSEL WILLIS: I believe that's correct.

13 MR. HARRIS: That would have been our assumption  
14 the entire time, so we wouldn't object to the language.

15 HEARING OFFICER VALKOSKY: Okay, anything on Vis  
16 12 from anyone? Just that single change to the  
17 verification?

18 Okay, we'll take a recess. And after the recess  
19 we'll pick up -- we still have air quality, public health,  
20 noise and broad land use topic.

21 Okay, if we could take a 15-minute break till  
22 8:20.

23 (Thereupon a brief recess was taken.)

24 COMMISSIONER LAURIE: If you could take your  
25 seats please, thank you. Before we get started, we will

1 be offering and opportunity for public comment. There's a  
2 gentleman here who indicated he had to leave and has a  
3 brief comment to make at this time. Sir, if you can  
4 identify yourself for the record.

5 MR. STRUTHERS: Yes. My name is Neil Struthers.  
6 I'm the Deputy Executive Officer of the Santa Clara and  
7 San Benito Counties Building and Construction Trades  
8 Council. We've been involved as an advocate for this  
9 project, since, I don't know, July two years ago.

10 What I wanted to talk about was not about a  
11 particular issue, I think everyone here has addressed it  
12 quite well. I want to raise an issue that people may have  
13 not thought about, and that is getting this project built  
14 on time.

15 We've had two plants, a sutter plant and the Los  
16 Medanos plant where we've had approximately 600 workers on  
17 each site working two shifts a day six days a week.  
18 That's a lot of workers. These are very specialized  
19 crafts, boiler makers, steam fitters, electricians. As  
20 far as boiler makers and steam fitters, they're not  
21 exactly indigenous to the south bay. That's more refinery  
22 area Contra Costa where you find a majority of that  
23 workforce.

24 My point being is that both of those plants are  
25 now on line. Those workers a lot of them come from other

1 states, other areas of the country to do this type of work  
2 specifically. They travel around the country.

3           And there's a lot of power plants being built in  
4 the western part of the United States. Our concern is if  
5 we don't -- if this project gets dragged out any longer,  
6 if we can start moving dirt in August or the beginning of  
7 September, we're going to lose a lot of these workers to  
8 other power plants around the western states. We won't be  
9 able to run two shifts six days a week.

10           And I think that was everyone's intent that this  
11 thing would be built just like the other two plants, but  
12 if we don't quickly, we could very well lose the ability  
13 to attract workers to an area of this region that is very  
14 expensive to live and very difficult to find  
15 accommodations. And we, in my opinion, are concerned that  
16 we won't be able to get these workers, if this drags out  
17 any farther.

18           So I appreciate you letting me spend the time to  
19 address the Commission and doing so in a timely manner.

20           Thank you.

21           COMMISSIONER LAURIE: Thank you, sir.

22           We appreciate your comments.

23           Mr. Valkosky.

24           HEARING OFFICER VALKOSKY: Thank you,  
25 Commissioner Laurie.

1           Now, we'll turn to air quality. And I realize  
2 the overlap between air quality and public health.  
3 However, in my mind, I'd just like to note that we  
4 understand the appeal of the PSD permit and the arguments  
5 regarding ScoNOx presented by Santa Teresa and others, and  
6 I don't think we need to discuss those.

7           In the discrete air quality section, applicant  
8 has noted the need for revisions to Condition Air Quality  
9 52. And staff has proposed a revised version of that  
10 condition. Ms. Willis if you could explain the reason  
11 behind the new version of AQ 52.

12           MR. BADR: Magdy Badr with CEC Staff.

13           The reason for the condition -- the old version  
14 of the language was presented in the FSA, Final Staff  
15 Assessment with an older version that has been revised by  
16 staff later with the newer version which is presented in  
17 the comments. So we did feel the change is needed to be  
18 consistent among all the projects.

19           HEARING OFFICER VALKOSKY: Okay. So there's just  
20 a change for consistency purposes. Mr. Harris, any  
21 reaction by applicant to staff's revised AQ 52?

22           MR. HARRIS: We find that to be acceptable to us.

23           HEARING OFFICER VALKOSKY: Comments on AQ 52 by  
24 any of the other parties?

25           No comments.



1                   Okay, public health. By way of background in  
2 reviewing the evidence of record.

3                   I'm sorry.

4                   MR. MITCHELL: You were asking about comments  
5 about AQ 52.

6                   HEARING OFFICER VALKOSKY: AG 52, yes.

7                   MR. MITCHELL: Are you going from air to public  
8 health now?

9                   HEARING OFFICER VALKOSKY: Yes. There were no  
10 comment on AQ 52.

11                  Do you have a comment on AQ 52?

12                  MR. MITCHELL: No, is that the only thing we're  
13 going to talk about with regard to air?

14                  HEARING OFFICER VALKOSKY: I prefaced this by  
15 noting the overlap between air quality and public health,  
16 I understand that overlap. The major change, at least in  
17 the discrete air quality area, was the revised version of  
18 AQ 52. We've now covered that. Now we're going to public  
19 health.

20                  MR. MITCHELL: No, I had some other comments  
21 relative to air quality that I wanted to get to, but we'll  
22 do it later. That's fine.

23                  HEARING OFFICER VALKOSKY: Did you submit them in  
24 writing before?

25                  MR. MITCHELL: Yes.

1                   HEARING OFFICER VALKOSKY:   Okay, were they under  
2   Santa Teresa's comments?

3                   MR. MITCHELL:   Yes.

4                   HEARING OFFICER VALKOSKY:   Okay.  I prefaced this  
5   whole meeting by saying the chief purpose is to provide  
6   the Committee an opportunity to examine, to get further  
7   explanation on those comments this they don't fully  
8   understand, and which the Committee needs clarification.  
9   That's the purpose of the conference.

10                  MR. MITCHELL:   I want to get some  
11   clarification --

12                  HEARING OFFICER VALKOSKY:   Well --

13                  MR. MITCHELL:   -- relative to whether or not  
14   we've, in fact, been hurt.  I think it's relevant.

15                  HEARING OFFICER VALKOSKY:   Been hurt in what  
16   extent?

17                  MR. MITCHELL:   For example, we asked that the  
18   PMPD be revised and reissued to acknowledge the fact that  
19   PSD permit has been issued in violation of a BAAQMD LORs.  
20   I didn't hear any --

21                  HEARING OFFICER VALKOSKY:   I understand your  
22   position.

23                  MR. MITCHELL:   I didn't hear any --

24                  HEARING OFFICER VALKOSKY:   And that's all.  The  
25   Committee understands your position.  The Committee will

1 come out with revisions to this document. We don't need  
2 to discuss your position. It's understood.

3 MR. MITCHELL: I hadn't heard that last point.  
4 So you are intending to come out with the revisions?

5 HEARING OFFICER VALKOSKY: We opened this  
6 conference with the indication that the Committee will  
7 consider the comments, the discussions tonight and bring  
8 out such revisions as it deems appropriate. That was the  
9 groundrules. They have haven't changed.

10 MR. AJLOUNY: Stan, I have a comment. I agree  
11 with you this meeting should be on when you don't  
12 understand something so the Committee can understand when  
13 they come out with their decision or final decision.

14 But through the beginning of this evening, you've  
15 been going point by point, if an applicant or staff person  
16 makes a comment, even though it's in plain english, just  
17 like AQ 52 is plain English. Their position, I'm sure it  
18 was understood. There was nobody that made a written  
19 comment objecting to it, but you brought it up as a topic  
20 and you let them discuss it.

21 COMMISSIONER LAURIE: Because the Committee did  
22 not understand it. The Committee had questions on it.  
23 The Committee does not have questions on your position.

24 MR. AJLOUNY: I guess, I didn't hear the question  
25 on 52. It sounded like you understood it and --

1           HEARING OFFICER VALKOSKY: The reason for the  
2 change, we had an existing AQ 52. Staff is proposing a  
3 brand new AQ 52. Committee wants to know why.

4           MR. AJLOUNY: Well --

5           HEARING OFFICER VALKOSKY: The conditions of  
6 certification in our world are very important.

7           MR. AJLOUNY: My word too, Stan, I'm living here.

8           HEARING OFFICER VALKOSKY: That's right. And  
9 that's why we're focusing on the conditions.

10          MR. AJLOUNY: All right. I just wanted to make a  
11 point.

12          MR. MITCHELL: Okay. I have another comment  
13 relative to the air section part. One of the points we  
14 made was that the 1999/2000 data had been emitted from  
15 Tables 2 and 3. I'm wondering what facility there would  
16 be for us to review that data when it is made available,  
17 prior to the PMPD moving forward.

18          HEARING OFFICER VALKOSKY: You're assuming that  
19 it will be available. Is it in the record? Is it in the  
20 evidence of record as it exists today?

21          MR. MITCHELL: I don't know that it is. It  
22 wasn't in your summary table.

23          HEARING OFFICER VALKOSKY: Okay, then it's not  
24 before us. This is based on the evidence as the evidence  
25 was established during the hearings, not additional

1 evidence.

2 MR. MITCHELL: So you're willing to go forward  
3 with the most recent data missing?

4 HEARING OFFICER VALKOSKY: The Committee  
5 understand your position, that's all can I say, you know.

6 MR. BOYD: Stan, I have a question.

7 HEARING OFFICER VALKOSKY: Mr. Boyd, this is on  
8 air quality only.

9 MR. BOYD: Well, I mean you let these guys ask  
10 you a bunch of questions about the process, and I had a  
11 question, too, about the process.

12 HEARING OFFICER VALKOSKY: Okay, go ahead, Mike.

13 MR. BOYD: Basically, they you're saying that  
14 we -- that the only issues that are being questioned here  
15 or considered here are questions that the Committee has;  
16 is that correct?

17 HEARING OFFICER VALKOSKY: Fundamentally, the  
18 purpose of this conference is to assist the Committee in  
19 understanding the comments of the parties. If the  
20 Committee understands the comments and understands the  
21 positions, then the Committee is not going to discuss it.

22 MR. BOYD: So that leads to my other question,  
23 which is if you've received CARE's comments and a number  
24 of the other intervenor's or comments, to your knowledge,  
25 does the Committee have any questions on any of the

1 comments that any of the intervenors have provided or is  
2 it totally a futile waste of my time to be here.

3 HEARING OFFICER VALKOSKY: Those comments have  
4 come out as appropriate.

5 MR. BOYD: Is there a response to any of our  
6 comments?

7 HEARING OFFICER VALKOSKY: Not tonight, no.

8 MR. BOYD: How do we know that our comments have  
9 even been considered?

10 HEARING OFFICER VALKOSKY: You'll see the  
11 revisions, such as the Committee decides.

12 MR. BOYD: And so subsequently, if there are not  
13 revisions reflective of our comments, can we presume that  
14 our comments were not considered or acted upon?

15 HEARING OFFICER VALKOSKY: No, you cannot presume  
16 the comments were not considered.

17 MR. BOYD: Okay. Well, I'd just like to know if  
18 I'm wasting my time or not by even being here, if you're  
19 not going to even question any of the comments that any of  
20 the intervenors provided.

21 HEARING OFFICER VALKOSKY: Okay, comment noted.

22 Okay, public health, and this does overlap to air  
23 quality.

24 In its review of the evidence of record, and  
25 based in large part on that evidence put forward by CBRP

1 the Committee has cited to require applicant to use an  
2 oxidation catalyst, and that's contained in condition AQ  
3 55 on page 165 of the decision.

4 Part of the understanding that the Committee had  
5 at that time, and it is an emission as noted in the  
6 intervenor Ajlouny's comments that an additional 16.7 tons  
7 or thereabouts of PMT offset would be required.

8 Applicant in its comments has taken issue with  
9 the imposition of the oxidation catalyst. And in the  
10 alternative has proposed a revised version of condition AQ  
11 55. Mr. Harris, would you explain your version of AQ 55.

12 MR. HARRIS: I think I'll probably ask Mr.  
13 Rubenstein to take on the task.

14 MR. RUBENSTEIN: Thank you, Mr. Harris. Without  
15 revisiting the issue in its entirety, in the applicant's  
16 comments on this condition, we disagreed with the  
17 Committee's conclusions regarding the significance of the  
18 air quality impact and public health impact related to  
19 acrolein, recognizing, however, that the Committee is  
20 attempting to deal with contradictory testimony. We had  
21 proposed a revision to AQ 55 that would allow the  
22 applicant to conduct additional tests of acrolein on a  
23 turbine substantial identical to those proposed to be used  
24 at the Metcalf Energy Center, based on a testing method  
25 protocol to be approved by the commission, with the

1 intention of demonstrating that the emission rate that was  
2 assumed in the health risk assessment for the project  
3 does, in fact, represent the maximum acrolein emission  
4 from the facility. And if the applicant was successful in  
5 that demonstration, that the oxidation catalyst would not  
6 be required.

7           The condition was proposed in such a manner that  
8 in the event the catalyst was determined to be necessary,  
9 that the catalyst could still be operational by the time  
10 the project commenced operation. And the revisions that  
11 we proposed to AQ 55, including revised verification  
12 condition all go towards that intent.

13           HEARING OFFICER VALKOSKY: Is there any reason --  
14 first of all, assist me in my understanding, is it correct  
15 that applicant does have available the additional 16.7  
16 tons of PM 10 offsets?

17           MR. RUBENSTEIN: I'm sorry I didn't even address  
18 that issue. Would you like me to address that first?

19           HEARING OFFICER VALKOSKY: Well, just give me the  
20 yes or no. I mean, do you have the additional 16.7 tons  
21 of PM 10 offsets?

22           MR. RUBENSTEIN: No.

23           HEARING OFFICER VALKOSKY: You don't?

24           MR. RUBENSTEIN: No. And the reason why I say  
25 that is that if the project emissions really are greater



1 than what we've estimated, providing mitigation to the  
2 Energy Commission would not be adequate, and the PM 10  
3 mitigation this we've already provided would not be  
4 adequate, because the Bar Area distribute has a completely  
5 different set of regulations that we have to comply with.

6 And as a result, not only would we have to find  
7 16.7 tons of PM 10, but we'd have to find additional  
8 offsets to substitute the mitigation that we provided to  
9 the Commission.

10 HEARING OFFICER VALKOSKY: Okay. Ms. Willis,  
11 staff position.

12 STAFF COUNSEL WILLIS: Yes. I'll have Mr. Badr  
13 address this issue.

14 MR. BADR: To answer your last question, I  
15 believe that the applicant has the sufficient offsets  
16 provide that PM 10 increase from applying the CO catalyst,  
17 would then increase would be around 16.7 tons. We have a  
18 VOC Surplus of 37.52, and that's in air quality Table 11.

19 So they have sufficient offsets to provide the PM  
20 10 mitigation, as if this CO catalyst would be  
21 implemented.

22 HEARING OFFICER VALKOSKY: Okay. Stop there, Do  
23 you disagree with that?

24 MR. RUBENSTEIN: I agree that we have surplus VOC  
25 credits. However, those VOC credits would not be

1 recognized by the Bay Area district as PM 10 offsets.

2 HEARING OFFICER VALKOSKY: Okay. Mr. Badr, do  
3 you agree or disagree with that statement.

4 MR. BADR: I believe that the applicant is  
5 inaccurate in that, because the air quality management  
6 district might consider it, might take it into  
7 consideration and might look at it seriously. I spoke  
8 with the Bay Area Air Quality Management staff today and  
9 he said yes, they would like to look at that. The ARB,  
10 however, the California Air Resources Board will see that  
11 VOC is an acceptable mitigation for PM 10 at 1 to 1.

12 We have made the applicant to provide two to one,  
13 and the air district is comfortable with that, based on my  
14 discussion with them this morning.

15 COMMISSIONER LAURIE: Mr. Valkosky, certainly the  
16 concern is any discussion today is not helpful to us,  
17 unless you choose to reopen the record. So the question  
18 in the Committee's mind is in interpretation of what you  
19 think the evidence in the record says, and if there's  
20 disagreement as to what the evidence in the record says.

21 So is there a disagreement as to what the  
22 evidence in the existing record, which was created as a  
23 result of the evidentiary hearings or difference of  
24 opinion as to what that evidence said.

25 MR. BADR: I think it's a speculation on at this

1 time on the applicant's side to assume that the air  
2 quality management district will disagree to VOC  
3 mitigations. And my testimony today was just supporting  
4 or clarifying the they might accept it.

5 HEARING OFFICER VALKOSKY: Do you disagree with  
6 the original version of AQ 55, which imposed the oxidation  
7 catalyst?

8 MR. BADR: No, I do not.

9 HEARING OFFICER VALKOSKY: Okay, thank you.

10 MR. HARRIS: Mr. Valkosky, Mr. Harris. Can we go  
11 back a little bit here. We've jumped to a mitigation  
12 proposal. And Mr. Badr's comments and concerns were  
13 written without the benefit of having seen applicant's  
14 comments on the PMPD, and I want to make that point very  
15 clear to start out with.

16 And what did we say in our comments? We said in  
17 our comments quite clearly that we are willing to live  
18 within our existing emission limits. Therefore, if we are  
19 willing to do that, the issue of the additional mitigation  
20 is moot. There will be legally enforceable conditions of  
21 certification that we will agree to. I can have Mr.  
22 Rubenstein explain in the detail the technical reasons for  
23 why he believes there's no need to change those emission  
24 limits, but that is the position the applicant has taken.

25 And so I think we've gone with the cart way ahead

1 of the horse here. I'd like to go back to the horse.

2 HEARING OFFICER VALKOSKY: Well, let me ask my  
3 question to Mr. Badr was going to be his opinion on the  
4 workability/acceptability of your version of AQ 52, or I'm  
5 sorry, strike that, AQ 55, which I assume is where you're  
6 going to end up anyway; is that correct?

7 MR. RUBENSTEIN: That is a separate issue from  
8 the question of the PM 10 emissions, Mr. Valkoksy. The PM  
9 10 so --

10 HEARING OFFICER VALKOKSY: Please clarify that  
11 then.

12 MR. RUBENSTEIN: AQ 55 as we have proposed it  
13 goes to the question of whether or not an oxidation  
14 catalyst would be required and what criteria would be used  
15 to determine when it should be required.

16 There is a separate condition, an air quality  
17 section, which is -- excuse me, while I find the condition  
18 for you.

19 HEARING OFFICER VALKOKSY: Mr. Rubenstein, while  
20 you're doing this, also remember, that the Commission  
21 Committee has already decided it would prefer to see an  
22 oxidation catalyst employed.

23 MR. RUBENSTEIN: I understand that.

24 HEARING OFFICER VALKOSKY: Okay.

25 MR. RUBENSTEIN: And my only point is that

1 condition AQ 20 subparagraph H, like in Harry, limits the  
2 particulate emissions from these turbines to nine pounds  
3 an hour, when the duct permits are not in operation and to  
4 12 pounds per hour when the duct permits are in operation.

5           And our comments on the PMPD indicate that  
6 whether an oxidation catalyst is required or not, we are  
7 prepared to live with those conditions. Consequently,  
8 there is no 16.7 ton per year increase in PM 10, even if  
9 NOx emission catalyst were to be used.

10           MR. ABREU: Stan, I'd just like to reemphasize  
11 that. We realize the Commission is recommending an  
12 oxidation catalyst. If that's where you come down at the  
13 end of the day, we can live with that, and we we're  
14 willing to do it within the numbers that are already in  
15 and not within any increase of 16 tons. We'll stay within  
16 the limits that we're already required to meet without any  
17 increase.

18           COMMISSIONER LAURIE: So I want to make sure I  
19 understand this. As an alternative to installation of the  
20 equipment, are you willing to live within the standard  
21 that would be forth coming should that equipment be used?

22           MR. RUBENSTEIN: Not quite, Mr. Laurie.

23           COMMISSIONER LAURIE: Night quite.

24           MR. RUBENSTEIN: Regardless of whether the  
25 Committee stays with its proposed -- its version AQ 55 or

1 whether you accept our proposed version of AQ 55, in  
2 either case, we are prepared to live with the particulate  
3 emission limits that are set forth in Condition AQ 20H and  
4 consequently there will be no increase in particulate  
5 emissions, compared with what the staff and the Committee  
6 have already evaluated.

7 COMMISSIONER LAURIE: Okay. So the oxidation  
8 catalyst would reduce emissions beyond those numbers.

9 MR. RUBENSTEIN: The oxidation catalyst to does  
10 not reduce particulate emissions. My testimony was that  
11 it increases particulate emissions. Be that as it may, we  
12 believe based on source test data recently from the Sutter  
13 power plant that we can accommodate that increase in  
14 particulate emissions within the current proposed permit  
15 limits set forth in AQ 20H. And so there is no increase  
16 regardless of how the Committee ultimately determines the  
17 issue of AQ 55.

18 HEARING OFFICER VALKOSKY: Okay. So in light of  
19 that, and if the Committee decided to stick with the  
20 oxidation catalyst, would the existing AQ 55 be workable  
21 or would we still have to change it to the way applicant  
22 is proposing?

23 MR. RUBENSTEIN: AQ 55 is workable. We disagree  
24 with the need for it, but AQ 55 is workable as written.

25 HEARING OFFICER VALKOSKY: Okay. Thank you.

1 That's What I wanted to know.

2 MR. ABREU: And you don't need to increase in and  
3 we would not want to increase our limits or get additional  
4 offsets, even if we go with your 55.

5 HEARING OFFICER VALKOSKY: Right, so if the  
6 existing AQ 55 stands, your contention is then that you  
7 would not need to increase the PM 10/VOC offsets.

8 MR. ABREU: That's right.

9 HEARING OFFICER VALKOSKY: It's a simple as that.

10 MR. RUBENSTEIN: That's right.

11 HEARING OFFICER VALKOSKY: Mr. Badr, do you have  
12 any observations in light of that.

13 MR. BADR: Yes. The direct testimony from Mr.  
14 Rubenstein during the hearing that will be, if the CO  
15 catalyst could be employed for this project, would be two  
16 pounds an hour increase above and beyond what the  
17 condition that 20H will specify.

18 And the Committee is requesting the CO catalyst  
19 be employed, so we believe that the emissions should be  
20 increased as well and our sets -- the necessary offsets  
21 will be required.

22 HEARING OFFICER VALKOSKY: Okay, but --

23 MR. HARRIS: Mr. Valkoksy just a point of order.

24 HEARING OFFICER VALKOSKY: One second, Mr.  
25 Harris. But if the existing emission limits in AQ 20H is

1 not changed, okay, now that still represents the  
2 enforceable limitation, correct?

3 MR. BADR: That's correct.

4 HEARING OFFICER VALKOSKY: Okay. So is it also  
5 not correct that if applicant were to exceed that  
6 limitation, then enforcement action would occur?

7 MR. BADR: Based on the source test in the  
8 future, I guess, that's what you are --

9 HEARING OFFICER VALKOSKY: Yeah.

10 MR. BADR: Yes.

11 HEARING OFFICER VALKOSKY: Yeah. I mean, I guess  
12 what I'm asking in another way, is there a problem with  
13 keeping The existing limitations?

14 MR. BADR: Based on the evidence in the record,  
15 yes, there would be a problem, because the testimony was  
16 contradicted.

17 HEARING OFFICER VALKOSKY: Okay.

18 MR. HARRIS: With all due respect, I think you've  
19 mischaracterized the evidence in the record. I'd like to  
20 Mr. Rubenstein to properly characterize it.

21 HEARING OFFICER VALKOSKY: Let's not get into an  
22 argument, but I just really wanted an explanation so the  
23 Committee understands it.

24 MR. HARRIS: I'll let Gary go.

25 MR. RUBENSTEIN: If you take a look at the



1 transcript of the February 28th hearing, page 262, that is  
2 where I discussed the increase in particulate emissions  
3 and referenced the two pounds per hour is to my  
4 recommendations for permit limits not for actual increases  
5 in the emissions but for permit limits for projects where  
6 an oxidation catalyst is required. And what I indicated  
7 in the testimony at that page specifically on lines 20 to  
8 24 is that I recommend permit limits that are between 1.5  
9 and two pounds per hour higher when an oxidation catalyst  
10 is going to be used.

11           And so I don't believe that keeping the limit, as  
12 indicated in condition 20H, is inconsistent with my  
13 testimony. And again I don't want to get into new  
14 information tonight.

15           HEARING OFFICER VALKOSKY: No, I understand. Let  
16 me clarify for everyone here and myself. You basically  
17 say that it is your preference that if you're using an  
18 oxidation catalyst, the permit limit be increased  
19 somewhere on the order of two pounds?

20           MR. RUBENSTEIN: At the time of the hearing in  
21 February, that was correct.

22           HEARING OFFICER VALKOSKY: That was correct then.  
23 And are also you saying that the existing condition, AQ  
24 20H, which is not subject to change as far as I know, does  
25 not include that increase.

1 MR. RUBENSTEIN: That is correct.

2 HEARING OFFICER VALKOSKY: So effectively, you  
3 are saying that applicant would be willing to be bound to  
4 using an oxidation catalyst and the existing lowered  
5 Commission limitation of 20H, is that correct?

6 MR. RUBENSTEIN: That is correct.

7 HEARING OFFICER VALKOSKY: Okay.

8 MR. HARRIS: And just to be real quick, Mr.  
9 Valkosky we're talking about Mr. Rubenstein's advice to a  
10 client seeking an application.

11 HEARING OFFICER VALKOSKY: That's understood.  
12 And I'm just trying to understand the essence of the  
13 position, that's all.

14 Mr. Badr, any comments?

15 MR. BADR: No, I'm fine with that.

16 HEARING OFFICER VALKOSKY: That would be  
17 acceptable, okay, fine. That is the clarification. Any  
18 of the other parties on AQ 55?

19 MR. AJLOUNY: Stan, as I see it, I've heard a  
20 number of times tonight that we're supposed to take what's  
21 in evidence and what's in the hearings and nothing more.  
22 In the hearings we all heard it, that there would be one  
23 and a half to two pounds per hour per turbine of PM 10  
24 emitted, which was just quoted in the testimony, I forget  
25 what page and what date.

1           And so I'm just amazed that here we have  
2 testimony and saying this is what I strongly believe as an  
3 expert and we need to increase it this much, so that's  
4 with we can't have an oxidation catalyst.

5           But once and oxidation catalyst by the Commission  
6 has said yes, you need an oxidation catalyst, now they're  
7 saying I'm willing to keep the existing limits as they  
8 are, which only tells me that maybe there was a truth in  
9 that statement of the two pounds per hour per turbine and  
10 it just -- I'm having a hard time understanding how there  
11 can even be a consideration of keeping limits the same  
12 within the testimony.

13           HEARING OFFICER VALKOSKY: Okay, just and --

14           MR. AJLOUNY: That is not the way the process  
15 works in every other department. You don't build a power  
16 plant see the emissions and then say okay we'll pay for  
17 more because it's more than being mitigated.

18           HEARING OFFICER VALKOSKY: No, I don't think,  
19 Issa, that's -- at least that's not my understanding. My  
20 understanding is that the existing limit -- applicant's  
21 original preference was, you know, the existing  
22 limitations are set at --

23           MR. AJLOUNY: 90/12.

24           HEARING OFFICER VALKOSKY: Whatever it is in AQ  
25 20H. Applicant's position during the hearings appeared to

1 be if we did put and oxy catalyst on it that those limits  
2 would be raised.

3 MR. AJLOUNY: Yes.

4 HEARING OFFICER VALKOSKY: Okay, what I have just  
5 heard applicant say is those other limits would not be  
6 raised --

7 MR. AJLOUNY: And see --

8 HEARING OFFICER VALKOSKY: -- even if an oxy cat  
9 were installed.

10 MR. AJLOUNY: Can you see the credibility of the  
11 witness right now, Stan. That really concerns me that a  
12 witness can say that these emissions will have to be  
13 raised by one and a half and two, if there's an oxidation  
14 catalyst, arguing not have one, but now there is one.  
15 They say oh, well we'll live with that.

16 I mean, my kids can understand that, Stan.  
17 You're fooling anyone here, just to make it easier for us  
18 in court. But I prefer the Commission to look at bit  
19 crisper in not choosing what testimony and who they're  
20 going to believe and who they're not going to believe.

21 HEARING OFFICER VALKOSKY: Point made.

22 MR. AJLOUNY: The main point is that this not the  
23 way it runs in all the other power plant sitings that you  
24 have done.

25 MR. RUBENSTEIN: Mr. Valkosky, I was just going

1 to offer that during the public comment portion of the  
2 meeting, I would be happy to go into more detail, but I do  
3 not want to --

4 HEARING OFFICER VALKOSKY: I think, again,  
5 keeping to, at least the original purpose, which is to  
6 assist the Committee's understanding. I have restated  
7 applicant's position correctly. Staff has stated its  
8 position. And I'm just trying to get the input from the  
9 other parties.

10 That's all.

11 Mr. Garbett.

12 MR. GARBETT: I believe the oxidation catalyst is  
13 one that is a very good concern, but I see a higher  
14 standard, particularly because they say there will be more  
15 particles is the need for electrostatic precipitator,  
16 because the major pollution particles are not the PM 10  
17 categories but a subcategory of PM 2.5, the real needy  
18 particles. And establishing ionic balance out of the  
19 stacks should be a very important thing for the community.

20 And that, by the way, might even reduce their  
21 particle load and their offset emissions even more.

22 HEARING OFFICER VALKOSKY: Okay.

23 Mr. Boyd.

24 MR. BOYD: Magdy, first, I had a question for  
25 you. I heard you said something to the effect of that the

1 CO catalyst would increase emissions by 16.7 tons of PM,  
2 is that what you said?

3 ENERGY FACILITIES LICENSING MANAGER RICHINS:  
4 Address the Committee.

5 HEARING OFFICER VALKOSKY: You're saying that  
6 was --

7 MR. BOYD: I wanted to ask on witness raised an  
8 amount.

9 HEARING OFFICER VALKOSKY: Okay. That was given  
10 an increased emissions limitation in condition AQ 20H.

11 MR. BOYD: Okay.

12 HEARING OFFICER VALKOSKY: Mr. Badr, is that not  
13 correct?

14 MR. BADR: Yes, sir.

15 MR. BOYD: So there is 16.7 tons?

16 HEARING OFFICER VALKOSKY: If the emissions  
17 limitation were increased. If the emissions limitation is  
18 not increased, there is no additional 16.7 tons of PM 10.

19 MR. BOYD: Now with 16.7 plus, as I remember  
20 originally is proposed, we had about, what, 92 tons of PM  
21 for the project? That puts us over the 100 ton limit,  
22 that requires a PSD permit for PM.

23 HEARING OFFICER VALKOSKY: And that is  
24 fundamentally one of the concerns The applicant alluded  
25 to.

1           MR. BOYD: My questions is, has applicant applied  
2 for such a permit from the air district, at this time?

3           MR. RUBENSTEIN: No.

4           MR. BOYD: Is applicant willing to amend its  
5 permit application to do this

6           MR. RUBENSTEIN: No.

7           MR. BOYD: Would you be permitted to operate  
8 under this limit with your existing PSD permit that's been  
9 issued that's under appeal?

10          MR. RUBENSTEIN: Yes.

11          MR. BOYD: So you have no intentions of changing  
12 your current air district permit conditions as a result of  
13 the additional 16.7 tons of p.m.?

14          HEARING OFFICER VALKOSKY: Okay, Mr. Boyd,  
15 that's --

16          MR. BOYD: I just want to know. I mean, it's  
17 just a simple math --

18          HEARING OFFICER VALKOSKY: Applicant. There is  
19 not additional 16.7.

20          MR. RUBENSTEIN: One quick clarification. Yes, I  
21 believe there is an increase in PM 10 emissions, but even  
22 with that increase in PM 10, the emissions in the plant  
23 will remain below the conditions of the limits AQ 20H.

24          MS. CORD: That's based on data from Sutter.  
25 That's not in this evidence, am I correct?

1 HEARING OFFICER VALKOSKY: Please.

2 MR. AJLOUNY: Oh, come on you can handle it.

3 HEARING OFFICER VALKOSKY: No, the reporter  
4 cannot handle it.

5 MR. AJLOUNY: I'm just kidding him. He has a  
6 sense of humor.

7 HEARING OFFICER VALKOSKY: Fine.

8 MR. BOYD: So you're saying now that, yes, if  
9 permitted at the level that they're calling out in 22H  
10 that it could potentially add 16.7 tons of PM. But you're  
11 accepting a permit condition that won't go over what  
12 you're already permitted at.

13 MR. RUBENSTEIN: That's correct.

14 MR. BOYD: Which is would keep you below the 100  
15 ton threshold required for a PSD permit, correct, at that  
16 level?

17 MR. RUBENSTEIN: The 100 ton threshold has  
18 nothing to do with the PSD permit.

19 MR. BOYD: You're saying it doesn't have anything  
20 to do with the producing over 100 tons of PM, it doesn't  
21 trigger the PSD permit?

22 MR. RUBENSTEIN: We're already required to obtain  
23 a PSD Permit, whether we're over 100 tons of PM 10, it  
24 doesn't matter.

25 MR. BOYD: But not for that criteria pollutant,



1 not or PM 10?

2 MR. AJLOUNY: They're not required emissions.

3 MR. RUBENSTEIN: PM 10 --

4 MR. BOYD: Because you're under the 100 tons?

5 MR. RUBENSTEIN: PSD permit is not required on a  
6 pollutant by pollutant basis. We are required to obtain a  
7 PSD permit and we have.

8 MR. BOYD: Well, I disagree with your assessment,  
9 but that's my opinion.

10 HEARING OFFICER VALKOSKY: That's noted.

11 MR. MITCHELL: I'd like to ask a question  
12 regarding this proposed modification to accept AQ 20H.

13 HEARING OFFICER VALKOSKY: There is no proposed  
14 modification to AQ 20H.

15 MR. MITCHELL: The discussion about accepting 20H  
16 for the revised oxidation catalyst.

17 HEARING OFFICER VALKOSKY: Right, there is no  
18 change. That was the point of the discussion. There is  
19 no change to the existing condition.

20 MR. MITCHELL: I just corrected that. So my  
21 point is that what's the consequence if this all gets put  
22 in and they aren't able to make the limit?

23 HEARING OFFICER VALKOSKY: The consequence is  
24 that the Bay Area District and/or Commission staff can  
25 take and enforcement action against them, applying

1 whatever remedy is appropriate.

2 MR. MITCHELL: And can I ask, for the record,  
3 what happened in the case of Crockett, where they had a  
4 very strict limit that they weren't able to meet?

5 HEARING OFFICER VALKOSKY: That's supposition. I  
6 don't have an answer to it.

7 MR. MITCHELL: It's not supposition.

8 HEARING OFFICER VALKOSKY: Well, no one here has  
9 the answer to it, so it might as well be.

10 MR. AJLOUNY: Do you, Magdy?

11 COMMISSIONER LAURIE: No, no, no, no, no.

12 MR. MITCHELL: I think it's relevant to this  
13 proceeding and this discussion.

14 COMMISSIONER LAURIE: The answer is we enforce  
15 the condition through all remedies available to that the  
16 Commission has. That's the answer.

17 MS. CORD: Can we ask you in what manner it's  
18 enforced?

19 COMMISSIONER LAURIE: I beg your pardon?

20 MS. CORD: Can we ask you what manner it's  
21 enforced, what will happen if they go over?

22 COMMISSIONER LAURIE: No, because it will depend  
23 on the circumstances. And it's ultimately a Commission  
24 decision. I can't speculate as to what any specific  
25 remedy would be. It would be a violation of the condition

1 like a violation of any other condition, and remedy powers  
2 kick in.

3 MS. CORD: But we're not allowed to know what the  
4 remedy powers are?

5 COMMISSIONER LAURIE: The remedy powers are  
6 totaled. The plant could be shutdown.

7 MS. CORD: Has that ever happened?

8 COMMISSIONER LAURIE: Probably not.

9 MR. MITCHELL: Based on the prior evidence  
10 present in the evidentiary record, I would argue that it's  
11 speculation that the applicant can now meet this limit.  
12 And I'd strongly oppose accepting this limit as it stands  
13 with the addition of an oxidation catalyst.

14 COMMISSIONER LAURIE: Thank you.

15 MR. AJLOUNY: One more thing.

16 HEARING OFFICER VALKOSKY: Last one.

17 MR. AJLOUNY: Yes, that's fine. I forget the  
18 words, but when you come out with PM 10 and Magdy did this  
19 but there are calculations -- modeling. You do modeling  
20 and they figure out okay so, much PM 10 and this is how  
21 you've got to mitigate, you came out with a number.

22 Well, in the hearings we had modeling and we had  
23 these numbers. And part of that modeling is the expert  
24 witness on the applicant's side of well here's the  
25 modeling numbers as it is. And here's the modeling

1 numbers with the oxidation catalyst. That is in the  
2 hearing, and I really feel strong and encourage you to use  
3 the modeling that's in the record as the limits and not  
4 just well, we want to save a dollar, so we'll just pick a  
5 number and roll our dice.

6           We've got to go by what's in the record, and  
7 there's modeling with whatever -- I'm not saying it  
8 correctly, but Magdy did the modeling, other people did  
9 modeling and you've got an witness adding to the modeling  
10 by adding an oxidation catalyst and that's in the record.  
11 It is unfair to think of anything else that could up that  
12 H as in Henry.

13           HEARING OFFICER VALKOSKY: Okay. And just last  
14 observation on that. That would -- my interpretation,  
15 Issa, of what you has just said would allow applicant a  
16 higher emissions limit.

17           MR. AJLOUNY: And If I'm thinking right, if that  
18 allows them a higher emissions limit, that means he has to  
19 mitigate the 16.7 tons times two, because there is no more  
20 PM 10 in the area. Am I off the wall on that? Am I  
21 making sense?

22           HEARING OFFICER VALKOSKY: I understand your  
23 position. That's all I want to do.

24           MR. AJLOUNY: No, I want to make sure that I  
25 didn't put my foot in my -- Stan, please, did I put my

1 foot in mouth or did I. --

2 HEARING OFFICER VALKOSKY: No, that's fine.

3 MR. AJLOUNY: So I'm correct in assuming that if  
4 the limit is higher --

5 HEARING OFFICER VALKOSKY: You are correct in  
6 that I understand your position. That's as far as I'm  
7 going, Issa.

8 MR. AJLOUNY: You're doing all you can to  
9 frustrate this, Stan, that's all right.  
10 I'll have my chance, buddy.

11 (Laughter.)

12 HEARING OFFICER VALKOSKY: Last on public health,  
13 I note that Santa Teresa takes issue with the calculation  
14 of the risk assessment as well as raises an apparent issue  
15 regarding endocrine disrupters. These are contained in  
16 pages 9 and 12 of their comments. Applicant, do you have  
17 any response to either or both of those calculation of the  
18 health risk and the presence of endocrine disrupters?

19 MR. HARRIS: I guess my comment would be that the  
20 health risk assessment was conducted according to  
21 applicable LORs. And the record is silent on this issue,  
22 as far as can I tell. And so I don't think I can support  
23 any of the proposed changes or suggestions.

24 HEARING OFFICER VALKOSKY: Okay. Staff.

25 STAFF COUNSEL WILLIS: No, we don't have any

1 comments on that.

2 HEARING OFFICER VALKOSKY: Okay. Anything else  
3 on air quality our public health, that's covered within  
4 the comments?

5 MR. AJLOUNY: You said page 9, are you talking  
6 about the Applicant's page 9?

7 HEARING OFFICER VALKOSKY: No, I was talking  
8 about pages 9 and 12 of Santa Teresa's comments.

9 MR. MITCHELL: Yeah. I'd like to just state that  
10 we have received the preliminary report on recycled waste  
11 water in San Jose dated July 25th. It's been docketed.  
12 And I think that should be accounted for and considered  
13 fully before the PMPD goes forward.

14 HEARING OFFICER VALKOSKY: As I understand, at  
15 least the copy I have, one of the proposals is that the  
16 City of San Jose cooperate with the Silicon Valley Toxics  
17 Coalition and investigates this matter; is that correct or  
18 incorrect?

19 MR. AJLOUNY: Correct, but they took it a step  
20 further. Commissioner Laurie was Emailed a copy on Friday  
21 and docketed Friday.

22 HEARING OFFICER VALKOSKY: I understand. I'm not  
23 questioning the receipt of it. I'm questioning for the  
24 proposal.

25 MR. AJLOUNY: Is it titled Preliminary Report of

1 Recycled Water?

2 HEARING OFFICER VALKOSKY: No, it is titled  
3 statement of Silicon Valley Toxics Coalition.

4 MR. MITCHELL: That was the statement that we  
5 submitted with your comments.

6 HEARING OFFICER VALKOSKY: Okay, thank you.

7 MR. MITCHELL: And then subsequent to that  
8 there's been a release of a report, which has been  
9 docketed and sent to Mr. Laurie --

10 HEARING OFFICER VALKOSKY: Thank you for that  
11 clarification, gotcha.

12 MR. MITCHELL: -- on the preliminary results of  
13 this study that basically says the proposed use of Nearly  
14 100 million gallons recycled waste water each month in a  
15 large cooling tower located near a fragile ecosystem  
16 system at the Shell aquifer appears to pose a serious  
17 threat to the local environment and public health.

18 Referring to Metcalf project specifically.  
19 Before such a tower is approved a number of studies should  
20 be conducted. And it goes on to elaborate on those.

21 We think this is a very serious issue and one  
22 that needs further study before finalizing the PMPD.

23 HEARING OFFICER VALKOSKY: Okay. I take it this  
24 preliminary report came out after the hearings; is that  
25 correct?

1 MR. MITCHELL: It's brand new.

2 HEARING OFFICER VALKOSKY: Okay. Thank you.

3 MR. RUBENSTEIN: Mr. Valkoksy, one more comment  
4 related to the earlier discussion that we had on two  
5 proposed conditions changes that staff has made.

6 HEARING OFFICER VALKOSKY: Okay.

7 MR. RUBENSTEIN: At the bottom of page four and  
8 the top of page five of the staff's comments, there are  
9 proposed changes to Conditions AQ 24 and AQ 25.

10 AQ 24 the staff's proposed changes is a little  
11 complicated. There are two components to it. The first  
12 component is that the staff is proposing to revise that  
13 condition so that the emission limits expressly include  
14 the cooling tower. We have no objection to that proposed  
15 change, and that would include the language in the  
16 introductory paragraph of AQ 24.

17 However, the staff has also proposed to change  
18 the number for particulates in paragraph D from 510 pounds  
19 per day to 571.4 pounds per day. It's my understanding  
20 and Magdy, you can correct me if I'm wrong, but that  
21 change encompasses two changes. One, is the addition of  
22 the cooling tower. And the second is the increase in  
23 particulate emissions from nine pounds an hour to 11  
24 pounds per hour.

25 MR. BADR: No, just the cooling tower.



1           MR. RUBENSTEIN: My understanding from the final  
2 determination of compliance is that if we're only talking  
3 about the cooling tower here, that that condition D would  
4 change from 510 to 553.5 pounds per day.

5           MS. CORD: Is this in your written comments that  
6 you submitted?

7           MR. RUBENSTEIN: These our comments on staff's  
8 proposed changes.

9           MS. CORD: Is this in response to a question from  
10 the Committee or what is this comment about?

11          HEARING OFFICER VALKOSKY: No, but it is a  
12 clarification that the Committee is interested in.

13          MS. CORD: Did we know that, or are you just now  
14 deciding that? I don't understand what this comment  
15 was -- what illicited this comment? Did the Committee ask  
16 for clarification on something?

17          COMMISSIONER LAURIE: The Committee is willing  
18 listen to it, just like the Committee has been willing  
19 listen to your comments. It's in response to -- it's part  
20 of the written comment. We don't have any problem with  
21 it. Is there anything else?

22          MR. RUBENSTEIN: I was just going to -- I think  
23 Mr. Badr was going to -- if the committee would like,  
24 we're going to try to resolve this issue of what this  
25 number should be very quickly for you.

1           Magdy, I'm looking at page B like boy, six of the  
2 Final Determination of Compliance. And it indicates the  
3 PM 10 emissions from the cooling tower are 43.5 pounds per  
4 day. I don't think that number was changed in any errata.  
5 And so I believe the correct number --

6           MR. BADR: No, actually it has changed. If it  
7 please, the Committee, in fact, I can answer that  
8 question. Actually, there was one of the issues we  
9 discussed in the hearing and we requested that that number  
10 would be changed. And it wasn't, so that's just clearing  
11 out the record and getting it straight.

12           If you look at Air Quality Table 5 in my  
13 testimony, and Final Staff Assessment, you would see that  
14 the total PM 10 pounds per day comes out to 571.4. That's  
15 based on the nine pounds an hour for the turbine and 11 or  
16 12 pounds an hour for the turbine and the duct permit. So  
17 that number, it was there before even the discussion.

18           MR. RUBENSTEIN: Rather than taking more of the  
19 Committee's time, I'll accept Mr. Badr's explanation for  
20 now.

21           HEARING OFFICER VALKOSKY: Okay, so tentatively  
22 571.4 pounds is a correct figure?

23           MR. RUBENSTEIN: Yes. We would have no objection  
24 to AQ 24. And then AQ 25 is the increase in the annual PM  
25 10 emissions. And for the reasons we indicated early, we

1 would object to that change.

2 HEARING OFFICER VALKOSKY: Yeah, that's covered  
3 by your prior discussion.

4 MR. RUBENSTEIN: That concludes our comments on  
5 the staff's proposed changes.

6 MR. MITCHELL: I'd like to make an observation  
7 for the record.

8 HEARING OFFICER VALKOSKY: Sure, Mr. Mitchell.

9 MR. MITCHELL: I'd like to make it clear that for  
10 AQ 55, we strongly disagree with the applicant's proposed  
11 changes.

12 HEARING OFFICER VALKOSKY: Okay, thank you.

13 Okay, moving on then to Noise. I think --

14 MR. AJLOUNY: Stan, before we go into noise, for  
15 clarification this preliminary report of recycled water,  
16 waste water in San Jose by the Silicon Valley Toxics  
17 Coalition. I just want to make it really clear. This is  
18 new development, new things going on. I know it's not  
19 part of the hearing, but it is new, and I want to  
20 emphasize that the Commission would take that into  
21 consideration to whether they want to open up the hearing  
22 to allow this documents into the collation or whatever.  
23 This isn't too belabor it.

24 HEARING OFFICER VALKOSKY: That's understood.

25 MR. AJLOUNY: This is serious stuff. We've been

1 through water, poisoning, and that's what they're talking  
2 about by this report.

3 HEARING OFFICER VALKOKSY: That's understood.

4 MR. AJLOUNY: I think, Commissioner Laurie, I  
5 don't know if you want to or, did you get or receive this  
6 Friday? Do you remember receiving something Friday?

7 COMMISSIONER LAURIE: My secretary would have  
8 interrupted it before it got to me and it's been docketed.

9 MR. AJLOUNY: Oh, okay. They just told me today  
10 they sent it to you and they docketed it also. But it's  
11 just significant and if you could look into it, Stan. I  
12 think you'll find some things of concern there.

13 HEARING OFFICER VALKOSKY: Okay, noise. In the  
14 proposed decision, and, again, based on a combination of  
15 testimony from the parties also a lot of the testimony  
16 from CBRP, the Committee decided that the proper point of  
17 measurement of noise was at the property line, and at that  
18 the project, in light of the evidence that it was  
19 technologically feasible to reduce the project's noise  
20 levels that the project should comply with the applicable  
21 standards at the property line.

22 In the Committee's view this is a necessary step  
23 to attempt to reduce the noise to the extent feasible, and  
24 thereby carrying nonconformance with the noise levels in  
25 the riparian corridor, as well as the commission's

1 obligation to attempt to cure or reduce noncompliances to  
2 the extent possible.

3           Based on at least an initial reading of  
4 applicant's comments, it appears that applicant is now  
5 contending that it is, in fact, not technologically  
6 feasible to reduce the project noise levels as specified  
7 in the decision.

8           Mr. Harris, would you care to explain applicant's  
9 position on noise?

10           MR. ABREU: I'll start off, Mr. Valkosky. This  
11 is Ken Abreu. First of all, in moving forward with a  
12 project, the project owner has to look at these  
13 conditions. And before moving forward with the project  
14 know that they're feasible and reasonable to accomplish.

15           And in looking at the Noise 5 condition, there  
16 were a couple of items in there that under certain  
17 interpretations could lead to a situation where it was not  
18 feasible to back accomplish what that condition may be  
19 interpreted to say.

20           Since we received the condition, we have gone  
21 through very, very thorough review of what is technically  
22 feasible to do with the project since the 44 BDA was  
23 mentioned as a limit. And then determined that and trying  
24 to meet that, we could not get there. And it just is that  
25 simple.

1           The Condition 5 as proposed in the PMPD had two  
2 areas that it raised issues for us. The first was the  
3 part where it said that project related operations of next  
4 property launch should comply with applicable standards.

5           Now, under our interpretation of the standards  
6 and under our reading of the record we can do that. But  
7 under what others are contending is the standards of the  
8 property line it would not be technologically possible to  
9 do that.

10           And so we see clarity in that condition, so that  
11 we have a condition so that we can move forward with  
12 knowing that we can meet it and not have an ambiguity.

13           The other portion of the condition we talked  
14 about meeting 44 DBA at the nearest residence. And if  
15 that could not met, we would need to implement additional  
16 requirements. And if that could not be met, we would be  
17 left with insulating the sensitive receptors. While a the  
18 basic description there sounded reasonable, we determined  
19 that we really can't get to 44, so we need to let you know  
20 that now before we get started. And the standard for what  
21 is it that we should implement if we can't meet 44 needs  
22 to be made clear, so that if we move forward with the  
23 project we can go to our owners and our lenders and know  
24 what is the standard this we have to meet in order to have  
25 a project.

1           And so the changes we've proposed for Condition  
2 Noise 5 are really to clarify those two issues in keeping  
3 with our need to have a condition that we know will work  
4 and at the same time be clear and unambiguous moving  
5 forward.

6           HEARING OFFICER VALKOSKY: Okay, do you agree  
7 that the applicable noise standards require measurement at  
8 the property line?

9           MR. ABREU: We felt that the record was strong  
10 that the property line 70 DNL was the proper --

11           HEARING OFFICER VALKOSKY: That was at the  
12 southern boundary, as I recall.

13           MR. ABREU: That's right at the one that was one  
14 property owner that real discussed the riparian, that's  
15 correct.

16           HEARING OFFICER VALKOSKY: How about in the  
17 riparian corridor?

18           MR. ABREU: The answer is no. And that was an  
19 issue that was, you know, pointed out as being -- it was a  
20 very real issue, even though we didn't meet the limit  
21 required in the riparian zone.

22           HEARING OFFICER VALKOSKY: Do you agree that  
23 there is not very little in the existing limits of the  
24 record, which would suggest that it is not technologically  
25 feasible to achieve the reduction as specified?

1           MR. ABREU: There is very little in the record at  
2 all about 44 in terms of technical feasibility.

3           HEARING OFFICER VALKOSKY: That wasn't the  
4 question. The question was, is there anything in the  
5 record saying it's technically infeasible?

6           MR. ABREU: There's just not much there. It's  
7 not technically feasible or infeasible.

8           HEARING OFFICER VALKOSKY: Well, we have some  
9 direct testimony, to my recollection, that says is it  
10 technologically feasible to achieve these levels at the  
11 property line? As I recall, the answer was in the  
12 affirmative, yes, it is technologically feasible.

13           I think you even recognized that, I believe, in  
14 your testimony.

15           MR. ABREU: You're right. There were a couple of  
16 statements. We early on made the statement after the PSA,  
17 after a quick review that It would be very expensive, but  
18 on a quick review you could meet 44. At that point, you  
19 know, we did not go beyond just a quick review to really  
20 get into the feasibility of that.

21           Similarly, I think the staff was asked that  
22 question at the evidentiary hearings. And you'd have to  
23 ask them on the depth of the analysis that was or wasn't  
24 done to back that up.

25           But there was no focused effort on our part to



1 really look at 44, because as we move -- with the staff  
2 they moved in the FSA to 49, and that was really the focus  
3 of our discussions.

4 MR. HARRIS: If I might add, too, Mr. Valkosky.  
5 Part of the issue here is the discussion about property  
6 lines to the north was really discussions that occurred in  
7 discussions of biological resources. And in that section  
8 there's a very clear discussion about the potential  
9 biological impacts of steady state noise, and the  
10 determination made in that section is quite clear that  
11 there will not be adverse impacts on the biological  
12 resources or the riparian corridor to the north.

13 Keep in mind, to the north is the creek and then  
14 the hill which applicant controls along with PG&E. There  
15 are receptors there, so the focus in the record was simply  
16 on the effects of the riparian corridor. And I think  
17 we're actually looking for an override of that policy,  
18 based on the recognition of biological effects to the  
19 north.

20 To the east is both the railroad line,  
21 significant noise source, no public property for receptors  
22 and then Monterey Highway. That, again, is I think  
23 pointed out very well on the record in the noise contours.  
24 So, I guess, I'd point you to the noise contours as well.

25 And then finally the bike trail to the least.

1 There's also discussion in the noise contours. And so to  
2 the extent the issue of various property line impacts were  
3 analyzed, where those do show up on the noise contours, as  
4 Mr. Abreu said the analysis there really is based on the  
5 49 DBA. I think for good reason. And we can talk more  
6 about the staff's --

7 HEARING OFFICER VALKOSKY: Yeah, but also, as I  
8 recall, at least, Mr. Harris, a lot of this was brought  
9 out by CBRP who was apparently concerned about the noise  
10 at the Cisco project property line. And I think that's  
11 where a lot of this came from.

12 MR. ABREU: Their property line, we were below  
13 the 55 DNL standard of the City, that even Pasantino's  
14 property, which was well before the CBRD property line, we  
15 would be at a --

16 HEARING OFFICER VALKOSKY: But the thrust of  
17 their evidence was that they -- it is measured at the  
18 property line, and that it is technologically feasible to  
19 meet 45 DBA. I mean, 44 DBA is my general recollection of  
20 it.

21 MR. HARRIS: I guess the issue here is the  
22 dispute is over the applicable property line standard. As  
23 Mr. Abreu said, I think at the CBRP line, it's going to be  
24 below 55 for sure. So to the extent CBRP had issues with  
25 that, we'd be in compliance with that LOR. And, you know,

1 I guess I raise the issue again as I did in visual. One  
2 of the issues here is that the sensitive receptor M1 is  
3 not being removed and farming operations are continuing  
4 there. And so I think that's part of the reason we ended  
5 up focusing on the receptors.

6 HEARING OFFICER VALKOSKY: There's a couple of  
7 other things involved. There is impact upon sensitive  
8 receptors and there is compliance with an applicable LOR.

9 MR. HARRIS: Correct. Yes, sir.

10 HEARING OFFICER VALKOSKY: Okay. And I think,  
11 you know, we're getting to the latter.

12 MR. HARRIS: Okay, let's talk about the LORs  
13 compliance issue here. Again, this Mr. Abreu said --  
14 first off it's not surprising to me that there's a lot of  
15 confusion about what Applicable LORs would be here. We've  
16 got a parcel that is part of the city and part of the  
17 county and the unique circumstances we find ourselves in.

18 And so put on that significant positioning by  
19 various entities who have an interest in the outcome, but  
20 the record would be a little confused in that. But I  
21 think looking at the evidence in the record, number one,  
22 which LORs ply, city versus county. Clearly, the answer  
23 in my mind is city. There's an agreement between the City  
24 and the County. And there are other issues related to  
25 city/county relationship that dictate, in my mind, that

1 the applicable LORs would be the city LORs.

2 In terms of the 55 DNL standard then with the  
3 City puts together, you know, Mark I think I will ask you  
4 to jump in there in just a second and talk about that  
5 applicable 55 LOR standard and residential receptors.

6 MR. AJLOUNY: Are we getting into testimony?

7 MR. HARRIS: We're reviewing the record.

8 HEARING OFFICER VALKOSKY: We're not taking new  
9 testimony on this

10 MR. HARRIS: This is all in the record, Stan.

11 MS. CORD: Well, then we already have it if it's  
12 in the record.

13 MR. HARRIS: Well, there's question.

14 MR. AJLOUNY: Well --

15 HEARING OFFICER VALKOSKY: Yes. The Committee  
16 wants this clarified, that's why I posed the questions.

17 MR. AJLOUNY: Well, they said they can't meet it.

18 MR. PASTACH: Mark Pastach. The question comes  
19 to the fact of is 55 or 70 DNL required at the southern  
20 property line. The applicant's position has been that 70  
21 DNL is required at the southern property line and that we  
22 meet that at the southern property line.

23 HEARING OFFICER VALKOSKY: At the southern  
24 property line. How about the other property lines?

25 MR. PASTACH: Yeah. No, we --

1           HEARING OFFICER VALKOSKY: Okay. So basically  
2 you say the southern property line is the controlling  
3 property line.

4           MR. PASTACH: Correct.

5           MR. HARRIS: Based on the location of the  
6 receptor, that's why the southern property line is the  
7 controlling line.

8           HEARING OFFICER VALKOSKY: That's based on the  
9 location of the receptor. How about based on the  
10 existence of the applicable LOR, noise ordinance from the  
11 City or the County.

12          MR. ABREU: Again, pointing back to the record we  
13 noted in our brief that our discussions with the City  
14 people never brought up 55 at the property line. I don't  
15 believe in the staff's discussions that were in the record  
16 they got a different answer. They also got a 70 DBA at  
17 the property line being my recollection.

18          And in the City's testimony, which really in the  
19 land use section we talked about the noise. The only  
20 noise issue that was brought out is not in compliance with  
21 the riparian noise.

22          HEARING OFFICER VALKOSKY: Although It was my  
23 recollection the testimony from DBRP would contradict at  
24 least some of your conclusions.

25          MR. ABREU: Perhaps.

1 HEARING OFFICER VALKOSKY: Yeah. Okay, fine.

2 Staff.

3 STAFF COUNSEL WILLIS: Before I turn it over to  
4 our noise witnesses, I wanted to bring a couple of points  
5 out. First, on the second paragraph with Noise 5, where  
6 it says the property line shall comply with applicable  
7 standards. Staff is concerned just about the vagueness of  
8 that section.

9 HEARING OFFICER VALKOSKY: Excuse me, Ms. Willis,  
10 when you said second paragraph, are you referring to --

11 STAFF COUNSEL WILLIS: The first line of the --

12 HEARING OFFICER VALKOSKY: Are you referring to  
13 Noise 5 in the proposed decision or Noise 5 in applicant's  
14 comments?

15 STAFF COUNSEL WILLIS: Page 407 of the PMPD.

16 HEARING OFFICER VALKOSKY: Okay.

17 STAFF COUNSEL WILLIS: Just the phrase applicable  
18 standards, we would maintain that that would need to be  
19 stated clearly for compliance purposes. And we are  
20 supporting the applicant's change in that sentence further  
21 down where the applicant adds, "best efforts." Once again  
22 we have uncertainty on how that would be complied with,  
23 whether it would be a technology list or a performance  
24 standard.

25 Best efforts is something that is something that

1 would be difficult to enforce compliance. And I think  
2 with those two comments, I'll turn it over to Mr. Rosen  
3 and Mr. Baker to comment on other issues that have been  
4 brought up.

5 HEARING OFFICER VALKOSKY: Gentlemen. Identify  
6 yourself for the record.

7 MR. ROSEN: My name is Alan Rosen. And I guess I  
8 can speak a little to the LORs and try to clarify our  
9 understanding was that it's true that we evaluated LORs  
10 with respect to noise sensitive receivers. And it was our  
11 understanding that for residential uses there was a  
12 certain standard of 55 DNL.

13 We wanted to clarify this application because the  
14 land use was agricultural, and we were told by the City  
15 that the applicable standard would be, which they applied  
16 to that type of use, the LOR would be 70 DNL at the  
17 property line and 55 DNL 50 feet from the residence. And  
18 I think that's why there's some confusion about the  
19 statement in the PMPD about applying that property line  
20 that the property line noise levels shall comply with  
21 applicable standards, because there has been some  
22 confusion about what the standards are.

23 It's our understanding, and what's in the record,  
24 is that the standard would be 70 DNL at the property line,  
25 55 DNL at the residents.

1                   HEARING OFFICER VALKOSKY: 70 DNL at the southern  
2 property line.

3                   MR. ROSEN: The southern property line and 55 DNL  
4 at the residents. The only other property line that was  
5 specifically addressed with regard to LORs was in the  
6 biological section. And it's my understanding that  
7 there's a policy with regard to noise for which would  
8 apply to the northern property line, which is to not  
9 increase noise level. And I think it's clear in the  
10 record that that LOR would not be able to be met, no  
11 increase in noise levels.

12                   I don't believe anywhere in the record is the  
13 noise level at the eastern property line or the western  
14 property line specifically addressed, nor what that LOR  
15 would be.

16                   HEARING OFFICER VALKOSKY: Okay. So focusing on  
17 page 16 of applicant's comments on these deals with the  
18 changes to Noise 5. Okay, I understand it as well as to  
19 say that you would support deleting the phrase comply with  
20 applicable standards and basically put in not exceed 70  
21 DNL at the southern property line, I expect. Would that  
22 be consistent?

23                   MR. ROSEN: Yes.

24                   HEARING OFFICER VALKOSKY: How about the rest,  
25 just walk me through applicant's proposed version.



1           MR. BAKER: My name is Steve Baker. After the  
2 sentence we just discussed about not exceed 70 DNL, the  
3 applicant then wants to say return to 49 DBA. Staff  
4 concurs with that. That's the number we put in our Final  
5 Staff Assessment, and we still believe that to be the  
6 valid number.

7           The next section that the applicant has added  
8 here additionally, "The best effort to reduce noise." I  
9 want to emphasize what Ms. Willis just said, this language  
10 would be unenforceable. I can't imagine one who could  
11 ensure compliance with this.

12           I can suggest one way around this would be to  
13 establish a list of technological additions that could be  
14 applied if the noise limits are not met, if 49 or if the  
15 Committee keeps it that way to 44 Decibels, we'll put  
16 together a list of mitigation measures that would be  
17 applied to the power plant.

18           And if the noise level at the Pasadena residence  
19 is too high, that would trigger the installation of these  
20 mitigation measures. But this trying to decide whether  
21 the applicant has in deed made their best efforts or not,  
22 I think is not enforceable.

23           Are there any questions.

24           HEARING OFFICER VALKOSKY: I believe if you were  
25 agree with the applicant, at least as I understood, Mr.

1 Abreu's previous statement, that it was technically  
2 infeasible to reduce the noise level at the property line.

3 MR. BAKER: Let me start out by saying yes, and  
4 then explain my answer. In the previous testimony I said  
5 that I believed that it was technically, at least,  
6 possible, if not, economically feasible to do so. And I  
7 still believe that.

8 If you look at the Crockett Cogeneration Project  
9 Crockett is half the machinery of this project, so it's a  
10 single gas treatment with a steam turbine. The Crockett  
11 Project nearest sensitive receptors for numerous residents  
12 is 400 feet away, which is about, you know, a third as far  
13 as the nearest receptor here. And the project was  
14 designed to visit no more than 49 DBA at those receptors.

15 So it is technically possible to build a project  
16 that way. It would be technically possible at the Metcalf  
17 project at no more than 49 Decibel or even 44 decibels in  
18 the standards. Whether it would be economically feasible  
19 to do so and whether Calpine would chose to pursue that --

20 HEARING OFFICER VALKOSKY: The economic question  
21 is not on the table. I'm just looking if the measures  
22 exist, the hardware exists, the mitigation, sound walls,  
23 silencers whatever it takes.

24 MR. BAKER: Yes.

25 HEARING OFFICER VALKOSKY: Okay. So we have a

1 clear dispute there.

2 MR. HARRIS: I actually Don't think we to, Mr.  
3 Valkosky.

4 MR. AJLOUNY: It sounded like it to me.

5 MR. HARRIS: We can respond to that if you'd  
6 like. And I think Mr. Baker would agree with the points I  
7 want to make, just really briefly, if I could.

8 HEARING OFFICER VALKOSKY: Okay.

9 MR. HARRIS: Mr. Baker, I think, we believe that  
10 we could get it to be even quieter. The constraints you  
11 operate on to do that, though, are significant. For  
12 example, you could add cells to a cooling tower expand the  
13 number of cells, have increased heating duty rejection  
14 that way.

15 To expand cells on this project, we would have to  
16 go into the riparian corridor, so there's a tradeoff  
17 there. You could make the plant less sufficient overall.  
18 Just take the loss of heat rejection and take the heating  
19 value down. Again, there's the tradeoff for heat  
20 rejection.

21 You could move the plume abatement system.  
22 Although, it wouldn't get you all the way to 44. The fact  
23 of the matter is at the 14 hours visible plume per year,  
24 there's extra equipment.

25 HEARING OFFICER VALKOSKY: Remember, Mr. Harris,

1 this is not testimony.

2 MR. HARRIS: No, I guess, I want to get these  
3 point out, because this list of items actually are in the  
4 record. I direct you to Table 5 on page 279 of the FSA,  
5 which is a list of various mitigation measures.

6 There are barrier walls. There are cooling tower  
7 inlet changes. And I'll stop there. I guess my point is  
8 it you assume that you don't have footprint design  
9 limitation or an efficiency limitation, then I think the  
10 answer is yes, you can get there. I guess my question to  
11 Mr. Baker this regard those tradeoffs to get the tower to  
12 a lower level.

13 MR. BAKER: And I would agree that, there are  
14 tradeoffs. Whether they're economically feasible or not  
15 is not for me to say.

16 HEARING OFFICER VALKOSKY: Okay. We're not going  
17 to economics, gentlemen. The question was just on  
18 technical feasibility.

19 MR. HARRIS: And actually, Mr. Valkosky, if I  
20 could just quick. I don't think I was going strictly to  
21 economics. They are talking about things like riparian  
22 corridor and barrier walls and those kind of constraints,  
23 the physical constraints of this science, and I'm not  
24 going making an economic argument.

25 MR. ABREU: Mr. Valkosky, this is Ken Abreu. It

1 really gets to what's technically feasible within the  
2 parameters of the project. We can't put more cooling  
3 tower cells on the site, because we can't expand out of  
4 the riparian zone. The efficiency of the plant is  
5 fundamental to what the project is. So to dereg cooling  
6 towers and dereg your plant is not in keeping with the  
7 basic efficiency value.

8           The visual air modeling issues are also  
9 constraints that the project has complied with other parts  
10 of the environmental aspects.

11           HEARING OFFICER VALKOSKY: Okay, part of your  
12 proposed changes deal with a definition of a legitimate  
13 complaint. Can you explain that.

14           MR. HARRIS: Yes. This has been an evolving  
15 issue, I know with several projects I've been working with  
16 on the Commission to define what constitutes a legitimate  
17 complaint. And the basic idea here is that legitimate  
18 complaint ought to be tied to affected individuals. So to  
19 the extent that there's a noise complaint, that noise  
20 complaint ought to deal with noise complaints by someone  
21 who lives near the property. Those complaints ought not  
22 to be coming from somebody who's living so far away that  
23 they could not possibly be impacted.

24           And so, I mean, given that the interest is in  
25 protecting the sensitive receptors, the proposed changes

1 here simply tie the concept of legitimate complaint to the  
2 concept of potential noise impacts.

3           The verification by the CPM, I think, is implied  
4 generally, in these things, but we thought it was  
5 important enough to be expressed in this case, that in the  
6 final analysis -- and project compliance managers have to  
7 do this all the time, they need to verify that a noise  
8 complaint came from the power plant.

9           We've all heard evidence anecdotally and I think  
10 maybe on the record where there have been noise complaints  
11 about power plant when the power plant is somewhere  
12 generically. I think it was Mr. Baker's testimony. If  
13 it's not, please forgive me.

14           But the example in the record, I believe, is  
15 noise complaints being filed when the power plant is shut  
16 down. So the idea here is to tie it to a standard that  
17 allows the Compliance Project Manager to make, basically,  
18 to verify those complaints.

19           The other aspect of the proposed language is that  
20 we're focusing on the hours of 10:00 p.m. to 5:00 a.m. and  
21 we're rapidly approaching that, I know, I apologize. The  
22 reason for the focus on those hours, those are the same  
23 hours that staff stated were the quietest nighttime hours.  
24 Those are the hours that were used to determine the  
25 background ambient.

1           And so the focus on the 10:00 p.m. to 5:00 a.m.  
2 is consistent with the staff's purpose in determining the  
3 background ambient.

4           Those are, I think, the major reasons the  
5 verification. These are the changes to a legitimate  
6 complaint.

7           HEARING OFFICER VALKOSKY: Mr. Willis, Or  
8 actually Mr. Baker or Mr. Rosen.

9           MR. HARRIS: Mr. Valkosky, I'm sorry, I have one  
10 correction that I need to make to our comments. We should  
11 have underlined in the protocol the last sentence starting  
12 within 30 days, that is new language that we proposed.  
13 And in our word processing, we failed to underline that  
14 sentence starting with within 30 days from the start of  
15 project construction.

16           HEARING OFFICER VALKOSKY: It's on page 17 of  
17 your comments.

18           MR. HARRIS: Page 17 in the middle, so it should  
19 have been underlined and to mark it as new text. And that  
20 is the verification based on the protocols, which shows  
21 the procedure for the approval of the best efforts plan.  
22 And we apologize for failing to underline that text.

23           HEARING OFFICER VALKOSKY: Staff.

24           MR. ROSEN: Just a clarification on that point.  
25 Trying to meet a 49 DBLEQ between 10:00 p.m. and 5:00

1 a.m., since it's an hourly noise level measure, that would  
2 restrict free each of hour of those times, the noise  
3 level.

4           Whereas, the 70 DNL limit is a 24-hour average  
5 noise level, which could allow variations on hourly noise  
6 levels, greater than would be allowed Between 10:00 p.m.  
7 and 5:00 a.m., so there could be a modification in there  
8 to change that 70 DNL to an hourly noise level when of  
9 something like 64 LEQ if you wanted to restrict the  
10 maximum hourly noise level versus allowing higher noise  
11 levels one hour that might average out to a 70 Decibel  
12 limit.

13           Does that clarify?

14           MR. BAKER: The problem that Mr. Rosen is trying  
15 to explain is that the 70 DNL can only really be  
16 calculated on a 24-hour basis, and it doesn't lend itself  
17 to be included in this 10:00 to 5:00 time slots. So  
18 perhaps the reference in that particular paragraph to 70  
19 DNL should be removed and just let the time frame limit  
20 the 49 DB. The 70 DNL, of course would be applicable at  
21 all times of day and night.

22           HEARING OFFICER VALKOSKY: Okay. Anything else?

23           MR. ABREU: Stan, you know we're fine with what  
24 they said. The 70 DNL is for 24 hours and just take it  
25 out of the 10:00 to 5:00 is reasonable.



1           HEARING OFFICER VALKOSKY: So basically a  
2 legitimate complaint would -- the definition would end at  
3 start-ups and shutdowns on your version here and delete  
4 "and 70 DNLs to the property line."

5           MR. ABREU: We could do it like that or what he  
6 also suggested was --

7           HEARING OFFICER VALKOSKY: Or say at 64 LEQ at  
8 the southern property line either way.

9           Okay I understand. Again, Mr. Baker, I think, as  
10 I understood staff's position that part on the middle of  
11 page 16 concerning best efforts is undesirable because  
12 it's unenforceable; is that correct?

13          MR. BAKER: Yes, sir.

14          MR. ABREU: Stan, can I speak to that a little  
15 bit on why we put that in there?

16          HEARING OFFICER VALKOSKY: Sure.

17          MR. ABREU: First of all, I sympathize with what  
18 Mr. Baker is saying in terms of the difficulty or  
19 challenge and best efforts. We were left with a situation  
20 we feel that the proper situation is to go back to the 49  
21 DBA as the standard of what was in the FSA, and what I  
22 believe the staff is also proposed going back to the FSA.  
23 And we believe that's the best and most straight forward  
24 way to go.

25          Nevertheless, recognizing what you had in the

1 PMPD to make an effort to go beyond that. We tried to  
2 come up with what we could come up with that would try to  
3 address your concern of going below 49.

4 And what can, you know, really -- what can you do  
5 besides the best efforts. This is our commitment, should  
6 you choose to go this route, is to go back to the CPM and  
7 propose, you know, additional mitigation.

8 And do it if it's feasible. If it's feasible, we  
9 will do it. In either case, staying on 49 we feel has no  
10 significant impacts, both the staff has determined that as  
11 well as.

12 HEARING OFFICER VALKOSKY: Let's not reargue  
13 that.

14 MR. ABREU: But that was the idea of the best  
15 interest was to give away, to try to get to what was in  
16 the PMPD, that was still something that we could feasibly  
17 do in some confidence and know that we can feasibly do it  
18 with some confidence.

19 HEARING OFFICER VALKOSKY: Okay, a feasibility  
20 are you defining feasibility as strictly feasible or  
21 technically and economically feasible.

22 MR. ABREU: Both.

23 HEARING OFFICER VALKOSKY: Okay, understood.

24 Does staff have anything to add in conditions?

25 MR. BAKER: No, sir.

1 HEARING OFFICER VALKOSKY: Other parties?

2 MR. AJLOUNY: Yeah, Stan, first I'd like to say  
3 that I don't feel it's the CEC's concern that if Calpine  
4 picked a poor chose for a location. To those comments the  
5 were just made well we can't technically do it, because we  
6 don't have enough room, we're going to the corridor,  
7 riparian corridor, and those kind of things.

8 I mean, people make mistakes. And if the  
9 applicant made a mistake, oh, well, but we still need to  
10 protect our environment.

11 So I want to start with that statement, I mean,  
12 it just kind of turned into something to just sit here  
13 start hearing -- you know, I feel like getting some cheese  
14 for all the whining going on here.

15 But any way, in regards to this who can talk  
16 about noise complaints, there could be some that live 50  
17 miles away that can complain, because we have, what you  
18 call, a park and trails that if they happen to be going  
19 down that trail and enjoying their family and hearing that  
20 noise, even though it might be temporary, it could be a  
21 concern.

22 So I think we all need to realize that those  
23 parks, the public parks, the County parks and the trails  
24 that are promised down the road can allow really anyone in  
25 the country or in the world to complain.

1           Regarding feasibility of 40, you know -- hearing  
2 it now, that you really can't do. Well, to me is, you  
3 know, let's find another location, let's work together.  
4 But the Sutter power plant, they have a noise problem.  
5 They had some issues with noise. And I have a document  
6 stated from Calpine on September 14th 1998 that's talking  
7 about the Sutter power plant which the closest Receptor is  
8 300 feet away from what I understand, and you can correct  
9 me if I'm wrong.

10           But it talks about, it has a statement in here  
11 that, "The new power plant will incorporate an advanced  
12 noise suppression design to ensure that the operation  
13 causes no significant noise impact at any of the nearby  
14 residences," first bullet.

15           "The new plant will comply fully with all  
16 Applicable LOR, laws and regulations including Sutter  
17 County's very stringent noise standards limiting  
18 stationary source noise level to 45 DBA at the nearest  
19 resident at night."

20           I think, you know, so we've heard it from the  
21 staff, that it's technically feasible. You can do it.  
22 It's just a matter of do you have enough land space, which  
23 I feel -- I think you can agree the Commission doesn't have  
24 to worry about if there's enough space.

25           If you can't do it, then oh, well, but you've got

1 to comply.

2 Right here in this document that I just read,  
3 hearing from the staff, we know that it's feasible. I  
4 want to point out, too, one thing that on page two of Eric  
5 Knight's document of the city of San Jose staff's input to  
6 MEC LOR's consistency table. I heard that the 70 DNL  
7 being talked about is a county -- as a city and 55 is  
8 county.

9 But on the 5th block on page two, the fifth block  
10 from the bottom, it says Noise Policy one. And it says,  
11 "The City's applicable noise level objections are 55 DNL  
12 as a long range exterior noise quality level, 60 DNL as a  
13 short range noise quality, and 45 DNL as internal noise  
14 quality level, and 76 as the maximum --

15 I'll repeat, 45 DNL as the interior noise quality  
16 level and 76 DNL as a maximum exterior noise level  
17 necessary to void significant adverse effects."

18 The other column to the right says, it doesn't  
19 meet this And it says the project does not meet the City's  
20 long range exterior noise level objective of 55 DNL  
21 required a CEC override.

22 So I need maybe clarification on what the City --  
23 you know, from what we heard today and what this document  
24 says, I might be off the wall again.

25 HEARING OFFICER VALKOSKY: No, I think that's --

1 let's just stop right there. I think that's a fair  
2 question.

3 Mr. Harris, do you have any reaction from talking  
4 about noise levels? Mr. Ajlouny has pointed out an  
5 apparent inconsistency. I think it's a fair -- that  
6 certainly merits comment.

7 MR. HARRIS: If I'm looking at the right place  
8 we're on page two, I guess, the third on fourth cell up,  
9 that noise policy one we're talking about.

10 HEARING OFFICER VALKOSKY: Noise policy number  
11 one.

12 MR. HARRIS: My understanding is that that policy  
13 involves a goal. I'm not sure whether they're in  
14 compliance with their own goal right now. So I you want  
15 to talk about relative LORs, it's certainly not the same  
16 kind of thing as a zoning ordinance.

17 Beyond that, the 55 DNL is the residential  
18 standard.

19 COMMISSIONER LAURIE: Well, go back to your last  
20 sentence, the LORs is not the same thing as zoning  
21 ordinance.

22 MR. HARRIS: Let me back up. I'm sorry, sir.  
23 It's stated as a goal. It's not --

24 COMMISSIONER LAURIE: So it's a general plan  
25 goal.

1           MR. HARRIS: Right, exactly. And my  
2 understanding is that goal is not currently met, so that's  
3 point number one.

4           And so I'm sorry if I confused you on that point.  
5 Basically, its not the same thing as a hard numerical  
6 Standard is a goal.

7           In addition, the 55 DNL is a residential  
8 standard. We've had a lot of discussion, and I guess I  
9 would direct you to page 11 of Our PMPD comments where a  
10 more detailed discussion about whether or not the M-1  
11 receptor area is a residential receptor. We believe under  
12 the LORs that that's not the case.

13           And so I don't particularly believe that the 55  
14 standard -- actually, I know the 55 Standard is aimed at  
15 residential. And, again, for the reasons we set forth on  
16 page 4-11 of our comments that standard does not apply to  
17 the M-1 residential residences.

18           HEARING OFFICER VALKOSKY: Does staff have any  
19 comment on those standards, specifically Noise Policy 1.

20           MR. ROSEN: Yeah, Noise Policy 1 is correct, in  
21 that, 55 DNL is the long-range exterior noise quality  
22 level, 60 for short-range primarily for residential uses.  
23 I discussed that earlier, there was a questionable about  
24 the applicability of that standard for an agricultural --  
25 a residence on agricultural land. And when we discussed

1 it with the City, we were told that the City applies that  
2 goal of 55 to the residents, specifically 50 feet from the  
3 residents. And that they applied an agricultural standard  
4 of 70 at the property line.

5 So that's where the discrepancy between the 70  
6 and the 55, how it's applied, came to be, through that  
7 discussion with the City.

8 MR. BAKER: And the 55 DNL at the residences is  
9 equivalent to a 49 LEQ at the residents.

10 HEARING OFFICER VALKOSKY: Sorry, Mr. Baker,  
11 could you repeat that, please?

12 MR. BAKER: The 55 DNL at the residents is  
13 equivalent to a 49 LEQ at the residents.

14 COMMISSIONER LAURIE: Mr. Baker, when we talked  
15 about measurements at the residents, what does the term at  
16 the residents mean? Does it mean outside wall, inside  
17 wall, backyard, front yard?

18 MR. BAKER: That depends on the jurisdiction. In  
19 this Mr. Rosen has talked with the City, and they  
20 confirmed to him that the measurement is 50 feet from the  
21 residence.

22 COMMISSIONER LAURIE: Fifty feet from the  
23 residence.

24 MR. BAKER: Yes, sir. I assume in the direction  
25 of the noise source.



1           HEARING OFFICER VALKOSKY: Okay. Issa, what is  
2 yours.

3           MR. AJLOUNY: In regards to startup and shutdown,  
4 I need to understand a little bit more during my homework  
5 around and calling people that live near power plants, I  
6 under that most of the noise that actually wakes people up  
7 out of bed are when you do the shutdowns and startups.

8           So there is some talk about something about  
9 between shutdown and startup. Does that include the  
10 actual shutdown process, when you hit the button to start  
11 shutting it down, because apparently that's where the high  
12 noise level, DB levels, come out.

13          So is that included or is the last conservation,  
14 Stan, was talked about between shutdowns and startups.

15          MR. HARRIS: Well, that's the reason we've always  
16 stated that they will meet 49 at the residents, because we  
17 can meet 49 on startup shutdown any time, and that's why  
18 49 was agreed to earlier.

19          MR. AJLOUNY: Okay. So you can meet --

20          MR. HARRIS: So the FSA contemplated specifically  
21 the thing that you're talking about, the noise when they  
22 startup and shutdown. And the staff's analysis and the  
23 applicant's analysis is that the project is specified to  
24 meet the 49 during startup and shutdown conditions and  
25 that's why it's specified.

1           MR. AJLOUNY: So it will never go over 49 whether  
2 you're shutting down or starting up. And the only reason  
3 that I understand is you can't meet 44 is because you don't  
4 have maybe enough room or the feasibility of the monies or  
5 whatever.

6           MR. HARRIS: We are not -- let me say it again.  
7 We are not making an economic feasibility argument. It  
8 relates strictly to constraints on site, whether it's the  
9 riparian corridor or related to power plant efficiency.  
10 All those things we talked about before.

11          MR. AJLOUNY: And I just want to understand, how  
12 were you able to accomplish the 44, 45 dba at a closer  
13 distance than 300 feet. And I think there are about three  
14 or four other power plants that I looked on the web that  
15 are Calpine.

16          MR. HARRIS: First of, I think you have the 300  
17 feet incorrect. I don't have the Sutter decision in front  
18 of me. And that project, again, it is using the ambient  
19 background for that area, and they don't have the same  
20 kind of footprint concerns that are on this site. And so  
21 it's comparing apples and oranges. The 5th -- let me  
22 finish, please.

23          The 5 DBA overhang is a screening tool. And in  
24 that case the screening tools -- we were able to meet that  
25 screening tool and that's the end of the analysis.

1           In this case, the screening tool showed it  
2   couldn't meet 44 using that baseline and so the analysis  
3   goes beyond the screening tool just like in the air  
4   analysis, it looks at the level, the 49 came out of the 55  
5   DNL, so that's how we get rid of the 49.

6           MR. AJLOUNY: Okay. I guess, I really want to  
7   point and focus in on the comment you just made that this  
8   is a different footprint. This is a different project and  
9   different parameters. And I think you mentioned the this  
10   sighs of the lot or the area of the building power plant.

11           A simple questions, if you had 100 acres to build  
12   this power plant, could you reach the 44 DBA?

13           MR. HARRIS: I don't know if you want me to  
14   address that.

15           HEARING OFFICER VALKOSKY: Okay, wait.

16           MR. AJLOUNY: Okay, the point I want to make is  
17   -- the other point I want to make, Stan, is the City -- I  
18   want to make sure that Mr. Mike Smith goes back to  
19   Commissioner Keese and makes this particular point. And  
20   Commissioner Laurie is here today and --

21           HEARING OFFICER VALKOSKY: Just make the point  
22   please. It's getting late.

23           MR. AJLOUNY: The point is that it sounds like  
24   the size of the lot is stopping from the 44 DBA. This  
25   other point I want to make about the Sutter power plant is

1 the Sutter power plant -- let me ask you this a dry  
2 cooling is much louder than wet cooling, is that true?

3 MR. HARRIS: It would depend on the footprint of  
4 the dry cooling tower. The tower at Sutter is 11 stories  
5 high. It's one football field -- one and a half football  
6 fields wide, I believe. It's a large structure. I would  
7 encourage you to see it.

8 MR. AJLOUNY: Of the dry cooling?

9 MR. HARRIS: And we're back to the same point we  
10 made earlier. You can make it as quiet as you want  
11 depending on how big you want to make.

12 HEARING OFFICER VALKOSKY: Yeah. We understand  
13 there are -- applicant has said there are certain site  
14 constraints, okay.

15 MR. AJLOUNY: Well, the point I want to make in  
16 this Sutter letter, is that the Sutter power plant is a  
17 dry cooling and they're able to reach 45.

18 HEARING OFFICER VALKOSKY: Okay.

19 MR. AJLOUNY: Then last, I highly object, as I  
20 did in my written comment about the park. I really feel  
21 when you do the condition of certification, it should say  
22 meet a standard and not anything to lead to any thing  
23 that's not clear and precise that allows the applicant to  
24 manipulate conditions of certification. In the words of  
25 well, if you can meet even the 49, then let's put some

1 windows in and air-conditioning in.

2 And I'd like that kind of statement struck, so  
3 it's just clear and precise, hopefully, 44 DBA as was  
4 first came out in the PMPD.

5 Thank you.

6 HEARING OFFICER VALKOSKY: Okay. Thank you, sir.

7 Mr. Garbett, you had a comment.

8 MR. GARBETT: For the riparian corridor, I would  
9 hope that the applicant would be encouraged to use solid  
10 fencing on the side of the riparian corridor. Let's not  
11 call it a sound wall, but to minimize the impact to the  
12 riparian corridor, and also I would like an addendum or a  
13 supplement to the EIR CEQA document, because the A  
14 weighted noise does not meet the City of San Jose Code.

15 What happens is everywhere in the LORs for the  
16 City of San Jose, who fancy C-weighted measurements. And  
17 therefore, the measurements taken up by the CEC and  
18 furnished by the applicant under A weighted cord, do not  
19 meet the requirements of CEWQA because they are not  
20 applicable to the City of San Jose their those require.

21 And therefore a new set of measurements should be  
22 made to use on the ANSI C weighted coats. I may this  
23 objection previously throughout the hearing.

24 HEARING OFFICER VALKOSKY: Yeah, I believe that's  
25 been noted. It's a matter of record.

1 Thank you, sir.

2 Mr. Volker.

3 MR. VOLKER: Steven Volker on behalf of the Santa  
4 Teresa Citizen Action Group. I had a couple observations,  
5 if I might. I've had an opportunity to review a number of  
6 Environmental Impact States over the years. And I am  
7 surprised to here today suggested that a five DBA  
8 difference is not significant.

9 The standard in many EISs is a 3 DBA drop or  
10 increase. That's the standard for a threshold of  
11 significance.

12 Secondly, we've heard that the standard should be  
13 applied during the nighttime only. That obviously ignores  
14 day use. Day use could be significant. And we all know  
15 that The absence of noise from any daytime activities is  
16 very important.

17 Finally, the applicant appears to base the  
18 proposal to increase the dba from 44 to 49 on its proposed  
19 commitment to use its best efforts to lower the noise  
20 below 49, but at the same time we've heard that staff has  
21 concluded a best efforts commitment is unenforceable.

22 It seems to me that if it's unenforceable you're  
23 taking away the soul justification offered for an increase  
24 in 49. And therefore, I conclude that the proposal to  
25 require 44 and at if that's not met, then to require

1 mitigation measures to get down to that level is the  
2 appropriate approach.

3 HEARING OFFICER VALKOSKY: Thank you, sir. We'll  
4 consider these comments.

5 MR. HARRIS: I'm sorry. Moving off of it. I  
6 understand there are some folks who wanted to do public  
7 comment that maybe ought to -- I was going to suggest  
8 respectfully that maybe we should let them do that before  
9 we take our break, so they can go home.

10 COMMISSIONER LAURIE: We're not going to take a  
11 break. We're going to finish in no more than 15 minutes.

12 HEARING OFFICER VALKOSKY: Okay. With that we're  
13 going to the last topic coincidentally, which is the Land  
14 Use, the general land use topic.

15 COMMISSIONER LAURIE: Mr. Valkoksy, let me  
16 provide a preliminary comment to this.

17 We did receive numerous writings regarding this  
18 issue. We understand that the issue, to some extent,  
19 remains a confusing issue. It is my intent to allow very,  
20 very brief comment tonight, because I'm not satisfied that  
21 oral comment will clarify the issue to the extent that we  
22 to have study it.

23 It will therefore be my recommendation to the  
24 Committee that there be a seven-day opportunity to provide  
25 additional written comment on this single issue. So with

1 that in mind, Mr. Valkosky, I am going to allow extremely  
2 limited comment with recognition that we could spend hours  
3 and hours on this issue tonight, and I do not intend to do  
4 that, but rather save the issue for additional written  
5 comment.

6 HEARING OFFICER VALKOSKY: Okay, Commissioner.  
7 In that light, I'd just like a real brief preface that  
8 there is no real disagreement, as far as I'm aware, on  
9 behalf of the Committee regarding specifying which laws  
10 are being overridden. We've noted that in the PMPD. The  
11 PMPD also requested that the parties provide a list,  
12 hopefully a stipulated list, concerning which Laws  
13 Ordinances Regulations and Standards with which LORs the  
14 project did not comply.

15 By my count we've got to have four lists, none of  
16 which, at least in my inspection necessarily agrees with  
17 one other. We have one from City, the staff, the county  
18 and the applicant.

19 The city also seems to have raised the inference  
20 that existing Conditional Land 1 in the PMPD is somehow in  
21 conflict with the biological opinion from the US Fish and  
22 Wildlife Service. The applicant seems to have introduced  
23 a new category in which it characterizes a law as being in  
24 compliance with, as a project, excuse me, being in  
25 compliance with, but nevertheless would like the Committee



1 to override that law.

2 I think those are the fundamental questions that  
3 we ought to have discussed very briefly right now.

4 Mr. Harris.

5 MR. HARRIS: Okay.

6 HEARING OFFICER VALKOSKY: The last one, the  
7 other thing, I know the County's input is based on an  
8 expected annexation. And at least to my reading of the  
9 City's comments, there seems to be some sort of  
10 implication that an annexation is expected or is taking  
11 place. I have no other knowledge of that.

12 COMMISSIONER LAURIE: Of course, we will not  
13 presume such annexation in our decision.

14 HEARING OFFICER VALKOSKY: No, we would have no  
15 evidence to prove that.

16 Mr. Harris.

17 MR. HARRIS: Thank you, but I'll have one  
18 correction at the end too to our table. But a couple of  
19 thoughts. What we tried to do, and I want to thank Eric  
20 Knight from the Commission staff for putting together the  
21 first draft of the LORs table. What we did, just so you  
22 understand our comments, we took Mr. Knight's base  
23 document, I'll call it, and we added to it. We indicated  
24 the additions to Mr. Knight's base document in bold and  
25 italics so people like me with my eyes could tell which

1 where which. So in reviewing our document, to the extent  
2 you see LORs that are in bold and italics, those are our  
3 additions to Eric's base document.

4 And, again, I think Eric did a very wonderful  
5 job. And the reason we added to that quite simply is, I  
6 think, the document, number one, focused on land use LORs.  
7 The land use specialist here would respect that, so we had  
8 some additions based upon that.

9 We also, I think, in prudence recognized that  
10 there were many parties involved in this party -- this  
11 isn't a party. I guess it was a party -- proceeding and  
12 there's different views there. And so, you know, the  
13 record obviously has many sides to it. And so we think  
14 it's imperative that the Committee override, and we have  
15 taken an expansive view of those issues.

16 The reason we have the column Mr. Valkoksy that  
17 yes but override, we think were clearly in compliance with  
18 those. However, other parties have said to the contrary  
19 somewhere in the record. So our intent there is simply to  
20 state we believe the record supports. There's evidence to  
21 the contrary and that's why we're seeking an override.

22 Just by way of background, as well, we've been  
23 very diligent in trying to work with other parties in  
24 trying to put together a stipulated list. Again, I want  
25 to thank the commission staff for their work on that. We

1 will continue to do to the consultations to get the filing  
2 done by the seven days that has been requested.

3 I think I've answered most of your questions, but  
4 I also have one question.

5 HEARING OFFICER VALKOSKY: Go back, again, real  
6 quick. Why would, in your opinion, an override be  
7 necessary if the project complies with the law?

8 MR. HARRIS: Simply, because there's differing  
9 evidence in the record. Our position, we think, is  
10 supported by substantial evidence. However, there are  
11 contrary opinions and contrary evidence in the record  
12 arguing that we are not compliance with those. And so  
13 that's we were over inclusive and included things that we  
14 think the record clearly supports our position, but other  
15 people took a different view.

16 HEARING OFFICER VALKOSKY: Okay. And then --  
17 we'll not do it now, but in your comments I notice and  
18 this is just a very brief inspection, there are points  
19 where I would have expected that your chart would have  
20 agreed with staff, but it does not appear to agree with  
21 staff's position. I could be mistaken there, but I think  
22 that's something that has to be checked.

23 MR. HARRIS: We will check that closely for sure.  
24 But the one correction that I wanted to make to our  
25 document and I don't know if you wan to make these kind of

1 corrections now, is there was an incorrect statement on  
2 page --

3 HEARING OFFICER VALKOSKY: In light of the time,  
4 Mr. Harris.

5 MR. HARRIS: We'll skip it. We'll fix it on our  
6 file. So that's kind of the summary. I guess I'd point  
7 out one other thing. You know we did go take a look at  
8 County LORs. Our position still remains that the  
9 applicable LORs are the city LORs. This is an area that's  
10 in the urban services area of the city through agreement  
11 and other wise that the county LORs are applicable.

12 HEARING OFFICER VALKOSKY: How about the apparent  
13 noncompliance plains of the biological opinion that the  
14 City raises?

15 MR. HARRIS: This is the issue related to the  
16 trails. I haven't seen this City's specific comments, but  
17 there is a valid issue there. This biological opinion, I  
18 think, states that there shouldn't be a trail on the other  
19 side of Fisher Creek. The city has, I think, interest to  
20 the contrary. We kind of wanted to stay out of the middle  
21 of the battle.

22 HEARING OFFICER VALKOSKY: Well, you can't stay  
23 out to the extent we have a condition that requires A  
24 trail if it says so.

25 MR. HARRIS: Again, I don't have the benefit of

1 the City's --

2 HEARING OFFICER VALKOSKY: That's fine. Just  
3 address it in your comments.

4 MR. HARRIS: We'll address it in our comments.

5 HEARING OFFICER VALKOSKY: Yeah, I mean it seems  
6 to be an important issue.

7 Ms. Willis.

8 STAFF COUNSEL WILLIS: Briefly, I want to also  
9 thank Mr. Knight for his diligent efforts to try to get  
10 the parties in my some sort of stipulated agreement.

11 He went above and beyond, kind of, the city's and  
12 county's LORs tables. We basically focused the land use  
13 LORs -- staff also agrees that the 11 visual LORs stated  
14 in the PMPD as requiring override, we would agree with  
15 that position as well.

16 Mr. Knight can address the land issue.

17 MR. KNIGHT: I'm aware that the biological  
18 opinion stipulates that there shall be no trail on that  
19 portion, along Fisher Creek on the Metcalf side. The  
20 condition, plan one doesn't require -- it requires the  
21 developer to install a trail, if and when the connection  
22 can be made to it from either the north or south of the  
23 property.

24 So it was my thinking that to not amend land one  
25 because possibly the biological opinion could change five

1 ten years from now, if somehow a trail could be seen as --  
2 it could be done in some way as to not damage the riparian  
3 area, because right now the property to the south of the  
4 Metcalf site is a private agricultural piece of property.  
5 It's not anticipated in the near future for campus  
6 industrial development so you wouldn't expect a trail  
7 across it. So it doesn't make any sense right now to  
8 install a trail on the Metcalf property, if it doesn't  
9 connect to anything.

10 And that's the same thing with the north end,  
11 this no connection right now to anything to the north.

12 HEARING OFFICER VALKOSKY: Okay. Is it the  
13 staff's position that the City LORs are the ones that  
14 apply to the project?

15 MR. KNIGHT: That was my understanding from  
16 reading what the County general plan says, that basically  
17 it defers in areas that are -- in services area, it defers  
18 to the City's applicable city's general plan in terms of  
19 allowable use and development standards.

20 And I think we have comments from the City on the  
21 PSA that said the same thing that the applicable LORs for  
22 the site are the City LORs.

23 HEARING OFFICER VALKOSKY: Okay. And this would  
24 regardless of any annexation?

25 MR. KNIGHT: That's my understanding, yeah. And

1 it's also in staff's FSA.

2 HEARING OFFICER VALKOSKY: I note, and again, the  
3 same comment as to applicant's comments, your chart and  
4 applicant's chart do not agree with one another and your  
5 chart. As far as consistency on your chart and the city's  
6 chart apparently don't agree with one another, as far as  
7 whether items are consistent or not. I would really  
8 appreciate some elaboration some clarification on that in  
9 your written comments, okay.

10 MR. KNIGHT: Okay. Is the expectation this come  
11 to some agreement?

12 HEARING OFFICER VALKOSKY: Any other parties?

13 MR. AJLOUNY: Eric asked you question I thought  
14 it was significant. May You can ask it again, Eric.

15 MR. KNIGHT: My question was, was there an  
16 expectation that we would come to an agreement during this

17 HEARING OFFICER VALKOSKY: Well, there's  
18 certainly a hope, let's put it that way. I've given up  
19 all expectations months ago.

20 MR. KNIGHT: We'll give it our best efforts.

21 HEARING OFFICER VALKOSKY: Okay. Any other  
22 parties?

23 MR. VOLKER: Yes. Thank you, Mr. Valkosky. On  
24 behalf of the Santa Teresa Citizen Action Group, we have  
25 several comments.

1           First of all, we feel that it's incumbent on the  
2 Commission to make a determination whether or not  
3 annexation is probable in this case. Under long line of  
4 authorities, stemming from the Boseman decision of our  
5 Supreme Court 30 years ago, courts certainly have seen the  
6 relevance of annexation decision.

7           We feel that this Commission should make a  
8 judgement, otherwise we don't have the information needed  
9 to assess which LORs are applicable, county LORs or city  
10 LORs or some mix of the two.

11           Secondly, we will take Commission up on this  
12 offer to allow us an additional seven days to submit  
13 detailed written comments on the proceedings tonight, on  
14 the submission of the parties that we've reviewed tonight  
15 and on additional documentation which we have received of  
16 late, including a letter from SEER, the State Employee's  
17 for Environmental Responsibility.

18           That document dated July 23 of this year made  
19 comments about the need for this Commission to assure that  
20 questions with respect to the documentation on which its  
21 decision's are based are fully aired and available for  
22 public review and comment.

23           We will submit the detailed comment with regard  
24 to a number of the technical standards and analyses that  
25 have been referenced this evening.



1           HEARING OFFICER VALKOSKY: Again, it's confined  
2 to stuff brought out this evening. Again, we're not  
3 trying to reopen the whole decision.

4           MR. VOLKER: Yes, it relates specifically to a  
5 number of the comments made by the applicant and the  
6 colloquy between the applicant and staff with respect to  
7 the technical feasibility of certain mitigation measures.

8           HEARING OFFICER VALKOSKY: Actually, you bring to  
9 my mind something I overlooked. In my preface, I believe  
10 I included annexation or the suggestion of annexation.

11          MR. HARRIS: Yeah.

12          HEARING OFFICER VALKOSKY: What's happening on  
13 that?

14          MR. HARRIS: Well, let me just respond, I guess,  
15 from the perspective of this proceeding in a factual  
16 response. I mean, our response right now, especially with  
17 the argument just raised legally, it's --

18          HEARING OFFICER VALKOSKY: You don't have to go  
19 there. I mean, there is nothing in our evidentiary record  
20 about annexation to my recollection.

21          MR. HARRIS: The record is closed and so there  
22 will be not; is that correct?

23          HEARING OFFICER VALKOSKY: No, unless somebody  
24 wants to reopen it, but right now, I just want to know  
25 what's happening. I mean it's a term that's been tossed

1 around.

2 MR. HARRIS: Mr. Abreu can give you a factual  
3 date here.

4 MR. ABREU: Okay. The City Council's --

5 COMMISSIONER LAURIE: Wait, wait, wait, wait.

6 HEARING OFFICER VALKOSKY: Okay, just real quick.

7 MR. ABREU: The City Council passed a resolution  
8 for annexation of Metcalf on June 26th. And so it's just  
9 got to go through a process before we get formally annexed  
10 but basically the City Council has already approved that.

11 HEARING OFFICER VALKOSKY: Okay. And how long  
12 does that process take or when would be the end of that  
13 process.

14 MS. YOUNG: This is Valerie Young with CH2M Hill,  
15 consultant to project. The Council adopts a resolution  
16 and forwards it to the Clerk of the County. And they  
17 record the annexation. That's an administrative action.  
18 To my knowledge, the recommendation has not yet occurred.  
19 It has to wait 30 days in order to occur. The 30 days has  
20 passed.

21 HEARING OFFICER VALKOSKY: Okay. So it's  
22 eligible to happen tomorrow?

23 MS. YOUNG: Yes.

24 MR. AJLOUNY: I just want to object to you taking  
25 their word. It's not part of the hearing. And I didn't

1 hear anything about LAFCO in the statement. But, again, I  
2 caution you, Stan, on taking anything that was said in  
3 this regard about annexation. It isn't part of the  
4 hearing.

5 MR. HARRIS: I'm going to agree with Mr. Ajlouny.  
6 The record is closed and we responded to a question.

7 HEARING OFFICER VALKOSKY: It is. That was for  
8 general knowledge.

9 MR. AJLOUNY: Well, I'm just reminding you.

10 MR. HARRIS: I do want to make the observation,  
11 though, that the annexation is proceeding mostly because  
12 of the comity thing, the relationship -- local  
13 relationship that we can proceed without the annexation.

14 And so to the extent that we're allowed to pull  
15 that, we just still go forward. It's obviously irrelevant  
16 to the proceeding from that perspective.

17 I do need some clarification on the seven day  
18 comments, because I thought I heard that that was limited  
19 only to the LORs table. And I guess I'd like the  
20 Committee's view on what they're looking for seven days  
21 from now, so I understand precisely what they're looking  
22 for. And this prompted obviously by Mr. Volker's comments  
23 about comments on issues other than the LORs table. I'm  
24 very concerned about the scope of that.

25 HEARING OFFICER VALKOSKY: Yeah. Fundamentally,

1 as I understood the Committee's direction was regarding  
2 LORs not necessarily -- I don't know if it's one in the  
3 same or not, talking about LORs applicability, LORs  
4 compliance, and it's not necessarily the same as the LORs  
5 table, if you understand what I mean.

6           The LORs table, there is some different issues.  
7 There is some biology, the apparent disparity between the  
8 positions of various parties. On some of these others  
9 looking at it a little more broadly, some of the changes  
10 that have been discussed in the comments directly can be  
11 seen as going to the compliance with an existing LOR. So  
12 I think that would be fair game also.

13           We're really looking at LORs compliance is one of  
14 the key things the Committee hopes to accomplish at some  
15 point is with relative certainty a listing of what is  
16 going to be over ridden or not. Are you asking for  
17 additional clarification or not.

18           MR. AJLOUNY: Stan, I have request. Is there  
19 going to be notice put out so that other parties will know  
20 about this Just how does that work. I know the City of  
21 San Jose, I know have some particulars and they weren't  
22 able to make it tonight, but maybe with a notice, they  
23 might inject some comments.

24           HEARING OFFICER VALKOSKY: No, I don't think  
25 there's a need to put out another order. I mean, we're

1 limited to the parties that have commented. Folks at the  
2 table are the only parties that commented.

3 MR. AJLOUNY: So there's not going to be official  
4 notice of this. I'm just --

5 HEARING OFFICER VALKOSKY: It wouldn't be a  
6 notice, Issa, it would be and order.

7 MR. AJLOUNY: Okay, order. Whatever the words  
8 are I think something official should go out.

9 HEARING OFFICER VALKOSKY: Okay. Thanks for that  
10 comment.

11 Anything else?

12 MR. GARBETT: Yes, just to give you an idea, the  
13 City of San Jose may have passed something on June 26th,  
14 but there are several caveats. And basically it's  
15 officially in limbo, because LAFCO has not acted. And  
16 because of that, there are a couple of other decisions  
17 before LAFCO and the City regarding other annexations  
18 regarding this project. And unfortunately, in the public  
19 records act, those things that they passed are not  
20 available nor will they be made available because they  
21 haven't been written, even though they've been passed, so  
22 that's some of the perplexing problems.

23 Now, the fundamental issue I have is the one tack  
24 that the Committee has been basically saying that State  
25 law requires that recycled water be used for the project.

1 The particular statute only mentions sewage water going  
2 into the ocean. And by the definition of ocean, I am  
3 stating this does not include San Francisco Bay and  
4 therefore recycled water should not be a requirement in  
5 imposed. And for that reason, this project has basically,  
6 on land issue, been completely misdirected.

7 Thank you.

8 HEARING OFFICER VALKOSKY: Okay. Anything from  
9 anyone else?

10 Is there any general public comment?

11 MR. AJLOUNY: Stan, I just want to object to  
12 that, because I specifically asked the question about  
13 public comment. We had a number of neighbors that wanted  
14 to make public comments.

15 HEARING OFFICER VALKOSKY: As time permits.

16 MR. AJLOUNY: Well, I think time is not  
17 permitted. It's already 10:30. We're paying for lawyers.  
18 And, you know, the Commissioner just said 15 more minutes.

19 COMMISSIONER LAURIE: Sir, we will allow the  
20 public comment.

21 MR. AJLOUNY: That's fine. Well, I just think  
22 the order should say that, that's all. The order said it  
23 wouldn't.

24 HEARING OFFICER VALKOSKY: No, the order said it  
25 would allow public comment as time permits.

1               COMMISSIONER LAURIE: Sir, do you have public  
2 comment. State your name.

3               MS. CORD: One last comment on that, that our  
4 time has been cut down on every topic tonight. I mean  
5 we're intervenors. If other parties, such as this Chamber  
6 of Commerce wanted to be an intervenor, they certainly had  
7 every opportunity to do that. We've come forward as  
8 intervenors. We have spent two years working --

9               COMMISSIONER LAURIE: Well, their time has not  
10 been taken out of your time.

11              MR. AJLOUNY: Well, you just rushed us.

12              MS. CORD: You told us to limit our comments and  
13 we were going to be finished in 15 minutes.

14              COMMISSIONER LAURIE: Do you have --

15              MS. CORD: I had a number of comments tonight.

16              COMMISSIONER LAURIE: Well, if you have comments  
17 in addition to what your attorney, your representative,  
18 asked, well then make those comments.

19              MS. CORD: Give me awhile to review my notes.

20              COMMISSIONER LAURIE: Well --

21              MS. CORD: I thought we were leaving in fifteen  
22 minutes. You Said that 20 minutes ago.

23              COMMISSIONER LAURIE: Well, that's fine, but I  
24 need to provide an opportunity for limited public comment.  
25 You have a legal representative. I assumed your legal

1 representative spoke for you. If you have additional  
2 limited comments, please offer them at this point.

3 MR. VOLKER: May I clarify I'm that I'm not  
4 representing the Santa Teresa Citizen Action Group as its  
5 sole representative, but I'm here largely in observation.

6 COMMISSIONER LAURIE: We understand Santa Teresa  
7 has multiple representatives.

8 MS. CORD: We also have several intervenors here  
9 who are not in the Santa Teresa Citizen Action Group.

10 COMMISSIONER LAURIE: That's fine. Offer your  
11 comments, please. Sir, why don't you take a seat and  
12 we'll call you back up.

13 MR. AJLOUNY: While she's thinking, I'm not  
14 trying to give you a bad time, but I had a number of  
15 neighbors calling me to see if they could come tonight,  
16 and I didn't want to have them waste their time, so I  
17 specifically asked the question. And you know you just  
18 made a statement that I need to allow for public comment.  
19 That's great. I'd appreciate that, but would you put it  
20 in order so these people that want to speak could come and  
21 speak.

22 And we told them don't waste their time, because  
23 it sounds like there won't be time, and it is just for  
24 people that turned in comments. Even in the order, it  
25 says even public comment can't be made unless you turned



1 in written comments by July 19th. That's all. Just a  
2 little bit more openness to the public process.

3 COMMISSIONER LAURIE: Thank you.

4 Ms. Cord.

5 MS. CORD: I'm not going to go into it now. I  
6 just want to state on the record that I feel our time has  
7 been limited and now it's being offered in a way that  
8 we've had our time taken away from.

9 COMMISSIONER LAURIE: I apologize, sorry.

10 MR. KANEEN: Well, if I'm limited to just two  
11 minutes, and I take less, I'll yield back the balance of  
12 my time.

13 COMMISSIONER LAURIE: Well, you're limited to two  
14 minutes.

15 MR. KANEEN: My name is Tim Kaneen. I'm the  
16 President and the CEO of San Jose/Silicon Valley Chamber  
17 of Commerce. Thanks for this opportunity to make very  
18 brief comments, and thank you for your time and  
19 indulgence. As a former State legislator for six years, I  
20 honor the service on the Energy Commission.

21 Look, it's pretty Unprecedented when you've got  
22 environmental groups like the Sierra Club, the Lung  
23 Association, the Building Trades Council and the Chamber  
24 of Commerce, the urban chamber, the manufacturing group  
25 all together united on a single issue, and now the

1 leadership of the City of San Jose.

2           And I think here is why, Metcalf is a significant  
3 part of solving the energy puzzle for Silicon Valley.  
4 Now, our chamber represents more than 2,000 people  
5 throughout the metropolitan area more than 300,000  
6 employees.

7           And you've dealt with a lot of numbers tonight,  
8 but here's the numbers that really matter to us. Over the  
9 next ten years, we cannot double the size of downtown, add  
10 100,000 jobs, build 50,000 housing units without an  
11 assured energy supply. But those are exactly the  
12 projections.

13           So for us this is not about one neighborhood.  
14 It's not about one company. It's about an entire city and  
15 an entire valley. It's an environmental issue. It's a  
16 land use issue. It's an economic development issue.

17           So we would ask that you act post-haste. You've  
18 done a deliberative process. You've gotten a variety of  
19 inputs, but the City of San Jose needs to move on and we  
20 need to get this power plant constructed and we'd ask for  
21 your strong support.

22           Thank you.

23           COMMISSIONER LAURIE: Thank you, sir.

24           MR. DIAZ: Hi. Good evening. My name is David  
25 Diaz and I'm here representing the American Lung

1 Association, Santa Clara, San Benito Counties.

2           The American Lung Association would like to  
3 continue its endorsement of the Metcalf Energy Center,  
4 recognizing the stringent air quality standard on this  
5 project. Electricity that would be produced by Metcalf  
6 Energy Center would be produced more efficiently than  
7 older power plants currently being use in the Bay Area,  
8 consume 40 percent less natural gas, and reduce emissions  
9 by up to 90 percent.

10           Do to rolling blackouts, people living in  
11 sensitive health conditions have been forced to live  
12 without electricity for hours. Currently, Silicon  
13 Valley's burgeoning energy demands are being addressed by  
14 the increased use of diesel generators at local  
15 corporations. These generators have few, if any,  
16 pollution controls.

17           Regulations so loose, we cannot exactly how many  
18 diesel generators there are. By way of comparison, a one  
19 megawatt emergency diesel generator releases approximately  
20 the same NOx emissions as would the 600 megawatt Metcalf  
21 Energy Center.

22           The American Lung Association has long been  
23 concerned about diesel emissions, which have been labeled  
24 as toxic air contaminants by the California Air Resources  
25 Board.

1           In conclusion, it is important for the American  
2 Lung Association to continue its endorsement of this  
3 project in order to help people understand the importance  
4 of replacing old style power plants with new clean natural  
5 gas fuel technology and reducing corporate reliance on  
6 diesel generators.

7           With monitored power plants, there will be fewer  
8 adverse effects on air quality.

9           Thank you.

10          COMMISSIONER LAURIE: Thank you.

11          Yes, sir --

12          MR. BRADLEY: Thank you, Commissioner Laurie. My  
13 name is Justin Bradley. I am the Director of Energy  
14 Programs for the Silicon Valley Manufacturing Group. And  
15 we've been on record in several occasions in favor in  
16 Metcalf, and that certainly continues today.

17          We -- represent over 190 member companies over --  
18 275,000 workers, and one in four of the private sector  
19 represented. And we're grateful that the conclusion of  
20 this long process is near.

21          But we have just one concern at this point and  
22 that's timing is that the project not be delayed beyond  
23 the summer of 2003, because of the importance of getting  
24 it on line as soon as possible. And we ask those involved  
25 to workout the final fine details in the spirit of

1 cooperation, to keep the project on schedule for the  
2 benefit of employers, working families and Silicon Valley,  
3 for us and for the long-term future.

4 Thank you Commissioner and various stakeholders.

5 MR. AJLOUNY: Hi. My name is Issa Ajlouny,  
6 talking as a public person. And being involved with this  
7 power plant, I want to state for the record that in May  
8 June, July and August there was 34 blackouts that were  
9 supposed to happen. We've already passed two of those  
10 months and had zero black outs. Those words were stated  
11 on KCBS by Carl, I don't know how to say his last name,  
12 from the Silicon Valley Manufacturing Group.

13 We're selling, if you look on the web, at least  
14 or -- I shouldn't say at least or as much as 2,200  
15 megawatts per hour out of State this summer. You can look  
16 on the daily ISO web site. I want to stress the fact that  
17 this power plant is not needed as some politicians that  
18 have received donations, as Sierra Club who received  
19 \$50,000. And I challenge anyone of those that have come  
20 up here to speak to go under oath and see if they received  
21 anything, the Chamber of Commerce and all also any other  
22 agency, like the Lung Association.

23 I just think there's other pretence of why people  
24 spent hours to come here and make a one or two minute  
25 statement that's been said many times before the

1 Commission.

2 Thank you.

3 COMMISSIONER LAURIE: Thank you, sir.

4 Ms. Cord.

5 MS. CORD: Thank you. I just wanted to make a  
6 comment that I haven't seen a list of any older plants  
7 that are being shut down. If the Lung Association has such  
8 a list, where's that gentleman, we'd really be interested  
9 in knowing what the power plants are that are going to be  
10 shut down because there aren't any in Santa Clara County.  
11 So I'd be interested in knowing which ones are going to be  
12 shut down.

13 I'd also be interested in knowing about the  
14 diesel generators, because if we don't know how many there  
15 are I don't know how we're assessing what kind of problems  
16 that's going to cause.

17 You had your two minutes. It's my turn. I'd  
18 also like to state that the power plants that have been  
19 proposed in the State of California total to about 85,000  
20 megawatts for a State that on the highest demand peak days  
21 only uses maybe 40,000 to 45,000 megawatts.

22 Clearly, we don't need all these projects. So  
23 again, the people that are coming up to talk about it,  
24 maybe don't truly understand that every power plant in  
25 this State is not needed, every power plant that's been

1 proposed.

2 I'd also like to remind the Committee that we did  
3 have testimony that the power from this particular power  
4 plant is going as far north as San Francisco. So the  
5 people that think maybe it's going to provide power to  
6 downtown San Jose, maybe need to look at how the lines and  
7 Transmission lines work, because it won't be providing  
8 power to downtown San Jose.

9 Thank you.

10 COMMISSIONER LAURIE: Thank you.

11 MS. LUCAS: Libby Lucas, private citizen. I am  
12 still paramountly concerned with the water quality and the  
13 water use of this area, Santa Clara County. This power  
14 plant is going to be placed on a near-surface aquifer.  
15 The chances for contamination are very high. It's use of  
16 prime quality water for cooling as a backup is absolutely  
17 very, very unsupportable.

18 There are so many other places it could be put  
19 that would not involve a 50 million wastewater treatment  
20 connection. It just doesn't make any sense. And some of  
21 the criteria is that some water is going to be sent  
22 further on for agricultural use in the south county. I  
23 don't think south county has really said they wanted our  
24 wastewater. The water would have to be desalinated to be  
25 of any use, otherwise you'd have a very bad salinity

1 buildup.

2           And desalination is extremely expensive. So  
3 assign us the 50 million for actually bringing the water  
4 up to the plant. You then have the desalination, which I  
5 think runs at \$1,000 per acre foot, which is way above  
6 anything else that the agriculture people have in their  
7 agreements with the State for water supply.

8           So there really is an awful lot of this logic  
9 that is absolutely insupportable. And I feel that the air  
10 quality aspects of this area are very, very sensitive, as  
11 well as the water quality.

12           And to put such a plant right where it could  
13 easily contaminate both with any amount of accident is --  
14 it just doesn't make economic sense, and it doesn't make  
15 any resource conservation sense. So, I wish that you  
16 would put this some place else where it's not sitting on  
17 the Coyote percolation delivery system and where any  
18 accident is going to put it in the deep aquifer that goes  
19 right under San Jose for their drinking water.

20           That's why San Jose has been against this  
21 initially, and they're being forced not to protect their  
22 water supply. And I think that since you are involved  
23 with the State Water Resources, this should be your prime  
24 consideration rather than a momentary spike or unspike in  
25 the electrical supply system.



1 Thank you.

2 COMMISSIONER LAURIE: Thank you.

3 MR. GARBETT: William Garbett talking as an  
4 individual now. Having been at the original scoping  
5 meeting that started out these hearing processes, we  
6 noticed that speakers were given even amounts of time  
7 except one speaker was basically attenuated in time for no  
8 purpose other than the fact that of the facts that were  
9 going on the record.

10 The comments made by the Committee during the  
11 original scoping record were basically disregarded in  
12 every respect. The original project proposed has gone  
13 forward without any major changes. The particular issues  
14 that the community brought up were many. The masking of  
15 the project, specifically the height, including the smoke  
16 stacks, the cooling methods, the pollution and so forth  
17 have basically not been addressed.

18 Basically, what you have is a large building,  
19 every bit as large as it was to start off with, the stacks  
20 as high as they wanted in the very beginning. Big power  
21 wants big smoke stacks, just like small boys want a big  
22 phallic symbol.

23 This is what has predominated the hearings. You  
24 haven't changed this There have been alternatives  
25 suggested to you during the hearings, you have remained

1 silent as to those.

2 Thank you.

3 COMMISSIONER LAURIE: Anybody else?

4 As a reminder, any additional written comments  
5 relating to LORs issues, and I would have misspoke by  
6 saying seven days, because I guess seven days takes us to  
7 Sunday night, right. They will be due close of business  
8 Monday.

9 Okay, anybody else?

10 Then this meeting is adjourned.

11 Thank you very much.

12 (Thereupon the PMPD hearing was  
13 adjourned at 10:45 p.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand  
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5 That I am a disinterested person herein; that the  
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8 Reporter of the State of California, and thereafter  
9 transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in any  
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 9th day of August, 2001.

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